United States Court of Appeals

for the Second Circuit

APPENDIX

75-7548

B

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

DOCKET NO. 75-7548

INTERNATIONAL CONTROLS CORP.,
Plaintiff-Appellee,

vs.

ROBERT L. VESCO, et al.,
Defendants,

and

VESCO & CO., INC.,
Defendant-Appellant.

CIVIL ACTION—ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
SAT BELOW: HON. CHARLES E. STEWART, JR., U.S.D.J.

UNITED STATES COURT OF APPEALS
FILED
DEC 17 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX
Volume II

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450 Park Avenue,
New York, New York 10022

and

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On the Brief

N. J. Appellate Printing Co., Inc., Woodbridge, N. J. (201) 636-2030

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July 17, 1973

1109-15

Hon. Charles E. Stewart, Jr.
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: International Controls Corp. vs.
Robert L. Vesco, et al
73 Civ. 2518

Dear Judge Stewart:

Pursuant to the discussion before the Court on July 9, 1973, the following comprise specific objections on behalf of Vesco & Co., Inc. to the substance and form of this Court's orders of July 3, 1973, and the findings incorporated therein. The following is not deemed to be exhaustive, nor a waiver of our overall position that the Court is without jurisdiction, that the complaint fails to state a claim upon which relief can be granted, and the numerous other objections and defenses previously submitted:

1. We object to the entry of any order purportedly directed to Vesco & Co., Inc. in the matter of SEC v. Vesco (72 Civ. 5001 (CLS)), and we have great difficulty in understanding even after oral argument the Court's entry of such

an order against our client which is not even a party to that action.

2. We object to Paragraph 3 of the findings and in particular the reference to the "claims" therein of "Special Counsel". Such "claims" do not belong in any findings of fact or conclusions of law. We particularly object to sub-paragraph (d) of Paragraph 3 in that there is no evidence in the record, other than the bare application of the plaintiff, to support that paragraph, and what does appear in the record in this matter by way of fact tends to contradict.

3. We object to the last sentence of Paragraph 10 in that there is no evidence supporting it.

4. We object to Paragraph 11 and ask that it be stricken. There is no evidence in the record to support it insofar as Vesco & Co., Inc. is concerned, and we do not even know what the phrase "corporate alter ego" is supposed to mean.

5. We object to the last sentence of Paragraph 14. It should be pointed out, incidentally, that not all of the ICC stock held by Vesco & Co., Inc. was transferred therein by Robert L. Vesco, but approximately 46,000 shares thereof was transferred to Vesco & Co., Inc. by his children.

6. We object to Paragraph 16, in that it is largely unsupported by the evidence.

7. We object to Paragraphs 21 and 22 in that they are unsupported by the evidence and contrary to the prevailing legal principles.

8. We object to all of the conclusions of law insofar as they purport to pertain to Vesco & Co., Inc., and we specifically object to Paragraphs 8, 9, 10 and 11 of said conclusions in that they are contrary to the record in the matter and contrary to case law.

With respect to the question of an "evidentiary hearing" or lack thereof, it is our position at this time that the record is so completely barren of any proper evidence regarding any

kind of claim or basis of relief against Vesco & Co., Inc., that no useful purpose would be served by such a hearing at this stage. Furthermore, the Court's effort, simply because it entered an order and adopted findings of fact and conclusions of law without notice to us, to shift the burden of proof to us, is legally improper.

Respectfully yours,

LAURENCE B. ORLOFF

LBO/rf
cc: Shea, Gould, Climenko & Kramer, Esqs.

Order appointing Lois S. Yohonn, Esq. to serve process, dated July 27, 1973.

(568a - 569a)

FILED
JUL 31 1973
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

Civ. Action No.

73 Civ. 2518-CES

ORDER APPOINTING PERSON TO SERVE PROCESS

FILED
JUL 27 1973

Upon the annexed affidavit of C. Leonard Gordon sworn to on July 27, 1973, and it appearing that Lois S. Yohonn is a qualified person over twenty-one years of age and is not a party to this action, and that speed is essential in the service of the summons and complaint and that there will therefore be a saving in fees if service is made by said person, it is hereby

ORDERED, that Lois S. Yohonn be and she hereby is authorized to effect service of process in the within action on defendant Robert L. Vesco.

Dated: New York, New York
July 27, 1973

Charles E. Stewart
U.S.D.J.

Order appointing Lois S. Yohonn, Esq. to serve process, dated July 29, 1973, by depositing at premises.

(570a - 572a)

JUL 31 1973
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

Civil Action No.

73 Civ. 2518-CES

ORDER APPOINTING PERSON TO SERVE PROCESS

Upon the affidavit of C. Leonard Gordon sworn to on July 27, 1973, and it appearing that Lois S. Yohonn is a qualified person over twenty-one years of age and is not a party to this action, and that speed is essential in the service of the summons and complaint and that there will therefore be a saving of fees if service is made by said person, it is hereby

ORDERED, that Lois S. Yohonn be and she hereby is authorized to effect service of process in the within action on defendant Robert L. Vesco, and it is further

ORDERED that, service of process upon said defendant Robert L. Vesco may be effected by depositing a copy of the summons and complaint herein upon the premises of the last known residence of said defendant located in Nassau, Bahamas, and mailing a copy of the summons and complaint herein to said defendant at the address of such last known residence in Nassau, Bahamas.

FILED
JUL 1973

Dated: New York, New York
July 27, 1973.

Charles E. Stewart, Jr.
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	:	Civ. Action No.
Plaintiff,	:	73 Civ. 2518-CES
-against-	:	
ROBERT L. VESCO, et al.,	:	AFFIDAVIT
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

C. LEONARD GORDON, being duly sworn, deposes and says:

1. I am a member of the firm of Shea Gould Climenko & Kramer, attorneys for plaintiff in the above entitled action. I make this affidavit in support of the instant application pursuant to Rule 4(c) of the Federal Rules of Civil Procedure for an order appointing Lois S. Yohonn as a qualified person to effect service of the summons and complaint herein upon the defendant Robert L. Vesco.

2. It appears that defendant Robert L. Vesco can be served in Nassau, Bahamas. Since it is not feasible or practical to have the United States Marshal attempt to serve said defendant in the circumstances, and since the appointment of

Notice of Appeal dated July 30, 1973.

(573a - 576a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al, Defendants.	Index No. 73 Civ. 2518 (CES) NOTICE OF APPEAL

TO: SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
330 Madison Avenue
New York, New York 10017

and

DAVID M. BUTOWSKY, ESQ.
230 Park Avenue
New York, New York 10017

Attorneys for Plaintiff

S I R S :

PLEASE TAKE NOTICE that defendant Vesco & Co., Inc. hereby appeals to the United States Court of Appeals for the Second Circuit from the whole and every part of the order of the Hon. Charles E. Stewart, dated and entered in this action on July 3, 1973, which order, inter alia, granted plaintiff's applications for preliminary injunctions.

PLEASE TAKE FURTHER NOTICE that in the course of prosecuting the above-noted appeal, Vesco & Co., Inc. will also challenge, without in any way entering any appearance whatsoever therein, the propriety of the entry of a second order of the Hon. Charles E. Stewart on July 3, 1973 captioned in the

case of "SEC v. Vesco" et. als. (No. 72 Civ. 5001 (CES)) purportedly directed to "defendant" Vesco & Co., Inc. which was not a party to such action.

ARUM, FRIEDMAN & KATZ
450 Park Avenue
New York, New York 10022
(212) 371-3200

By _____
ROBERT ARUM

Dated: July 30, 1973

HANNOCH, WEISMAN, STERN & BESSER
744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

By _____
LAURENCE B. ORLOFF
A Member of the Firm

Attorneys for Defendant,
Vesco & Co., Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

NOTICE OF APPEAL

ARUM, FRIEDMAN & KATZ
450 Park Avenue
New York, New York 10022
(212) 371-3200

and

HANNOCH, WEISMAN, STERN & BESSER
744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

Attorneys for Defendant,
Vesco & Co., Inc.

Affidavit of Lois S. Tohonn, Esq., dated August 6, 1973, regarding service of summons and complaint upon Robert L. Vesco.

(577a - 583a)

Affidavit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

Civ. Action No.

73 Civ. 2518-CES

AFFIDAVIT

FILED
AUG 6 11 05 AM '73
CLERK'S OFFICE
U.S. DIST. COURT
S.D. OF N.Y.

LOIS SYLOR YOHONN, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Shea Gould Climenko & Kramer, 330 Madison Avenue, New York, New York 10017, General Counsel for International Controls Corp., plaintiff herein.

2. By Order dated July 27, 1973, I was authorized to serve the Summons and Complaint herein upon the defendant Robert L. Vesco ("Vesco").

3. On Saturday, July 28, 1973 I proceeded to Nassau, the Bahamas. Having been informed that there were guards stationed at the residence of defendant Vesco, I determined to first attempt to serve him personally other than at his house. Therefore, after making numerous inquiries as to the possible whereabouts of defendant Vesco, I spent the afternoon and evening of Sunday, July 29, and most of the day on Monday, July 30 searching for the said defendant in various places located in Nassau and Paradise Island, the Bahamas, which places I had been informed

defendant Vesco frequented. These places included several restaurants, hotels, other places of entertainment, and yacht marinas.

4. Late in the afternoon on July 30, 1973, having been unsuccessful in locating the defendant Vesco up to that time, I proceeded to his residence on Brace Ridge Road, Nassau, the Bahamas.

5. Upon arriving at the defendant's residence, I proceeded to the gate of the grounds, which was locked and secured by three bolts. Two men who appeared to be guards were standing in the driveway near the gate. They approached and asked what I wanted. I inquired whether this was Mr. Vesco's house. After some evasion, one of the guards said that it was, and asked what I wanted.

6. I told him that a friend of Mr. Vesco in New York had suggested I stop by while I was in Nassau, and asked if I could speak to Mr. Vesco. The guard asked my name and I told him that I was Miss Yohonn.

7. One of the guards said that he would have to check and went inside the house. The other guard remained in the driveway. While the first guard was in the house, a car drove up containing several persons, including a woman whom I believe to be Mrs. Vesco, and two children. The remaining guard opened the gate for the car to enter; I remained standing outside the gate. After the people had gotten out of the car and entered the house, a boy of about 16 or 17 years old came out of the door, came up to me at the gate, and said, "My father said to ask you what you want."

I replied, "I want to serve him with a Summons and complaint in an action entitled ICC v. Vesco." The boy jumped back and I threw the complaint at him. He caught it and threw it back at me, and ran back into the house. I then picked up the papers and handed them to one of the guards saying, "I am serving you with the summons and complaint in ICC v. Vesco." The guards then became belligerent, threw the papers at me and said repeatedly, "You get out of here. We don't want no papers on this property. Don't you put anything on this property." They then threw the complaint out in the road.

8. At this point, being somewhat afraid of the guards I ran back to my car, which was parked several yards down the road, and drove back to the Paradise Island Hotel.

9. I returned to my room and telephoned the Chambers of Charles E. Stewart, District Judge, to inform him of what had happened and to request that he authorize me to use the ancillary order which had been previously prepared and signed on July 29, 1973, which Order permitted me to effect good service upon defendant Vesco by depositing a copy of the summons and complaint upon the premises of defendant Vesco's residence on Brace Ridge Road. Judge Stewart authorized me to effect service as provided in this second Order.

10. Anticipating possible problems upon my return to defendant Vesco's residence, I rolled up the said summons and complaint and tied it with a blue ribbon in order to facilitate throwing it over the wall onto the property.

11. I then hired a taxi and instructed the driver to drive along the coast road, which he did. I then told him to turn on to Brace Ridge Road, drive to the end, and come back. When we came even with the beginning of Mr. Vesco's property, which was located several yards from the gate at which the guards were standing, I told him to stop. I got out of the car, threw the summons and complaint onto the lawn a few feet from the front door of the house, and took a photograph of the premises with the summons and complaint lying on the lawn. I then got quickly back into the taxi. At this point, the two guards came running out of the gate, one of them bearing a piece of pipe and the other carrying a stick. One of them pulled open the door of the taxi and ordered me to get out. I answered, "No." He held the door open and kept saying, "You get out of that car, you take those papers." I again refused. At this point, the taxi driver said to the guard, "This lady hired me. You can't do anything to her while she is in my taxi." I then said to the guard, "Close that door immediately. You have no right to touch this car." The guard replied, "You have no right to put anything on this property." One guard then said to the other, "Go call the C.I.D.". (The C.I.D. is the Bahamian Secret Police). There then ensued a period of one or two minutes during which the guard continued to demand that I get out of the taxi; the taxi driver insisted that I had hired him and that the guards had no right to touch the car; and during which I repeatedly requested the taxi driver to drive on. Finally the taxi driver put the car into gear and started to drive slowly down the road. At this point, I noticed that Vesco's son, whom I

had spoken with earlier, was standing in the middle of the road watching the altercation. The taxi driver drove slowly to the end of the road and proceeded onto the coast road. A short way down the road, he said to me, "Ma'am, those men are following us. They are in the car behind the car in back of us." At this point becoming sericusly concerned for my safety, I instructed the driver to proceed to the Britannia Beach Hotel, which is a hotel some distance from the Paradise Island Hotel, but connected ther to by various corridors and the like.

12. I got the name and taxi number of the driver, and requested that he be good enough not to inform anyone of my whereabouts in the event the people in the car which had follow us approached him and asked any questions. I then proceeded by a circuitous route back to the Paradise Island Hotel, placed t film in my camera in a safe-deposit box and proceeded to my ro I remained in my room for perhaps one hour, during which on a couple of occasions the telephone rang. Each time I picked up there was no one on the line.

13. I do not know whether or not the last-mentio event is of any significance, but I was and continued to be cerned for my personal safety from that point until I left t Bahamas, which was the following day, July 31, there being no further flights available on July 30 after my return to the I at approximately 7:00 p.m.

Exhibit A Exhibit B

14. On August 1, after my return to New York, I mailed an additional copy of the summons and complaint herein to defendant Robert L. Vesco, addressed to him at his last known residence in Nassau, the Bahamas at Brace Ridge Road, by depositing true and correct copies of the same, properly enclosed in a first class post paid wrapper, in the official depository maintained and exclusively controlled by the United States Government at 330 Madison Avenue, New York, New York 10017.

Affidavit

Lois Sylor Yohonn

Sworn to before me this
6th day of August, 1973.

Alice Manos

ALICE MANOS
Notary Public, State of New York
No. 24-7702840
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1974

Transcript of proceedings before Judge Charles E. Stewart dated August 14, 1973.

(584a - 595a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff,	
vs	73 Civ 2518
ROBERT L. VESCO et al., Defendants.	

New York, N. Y.

August 14, 1973 - 12:15 p.m.

Before

HON. CHARLES E. STEWART, JR.,

District Judge.

APPEARANCES:

SHEA, GOULD, CLIMENKO & KRAMER, Esqs.,
General Counsel for Plaintiff
SHELDON D. CAMHY, Esq., of Counsel

BUTOWSKY, SCHWENKE & DEVINE, Esqs.,
Special Counsel for Plaintiff
DAVID M. BUTOWSKY, Esq., of Counsel

CHRISTY, FREY & CHRISTY, Esqs.,
Attorneys for Andean Credit S. A.
ARTHUR H. CHRISTY, Esq., and
ROBERT S. APPEL, Esq., of Counsel

PETER S. HERRICK, Esq.,
Assistant Regional Counsel, United States Customs
Miami, Florida

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MR. CAMHY: Your Honor, on the application of International Controls, your Honor signed an order to show cause on August 3, 1973 for respondents to show cause why respondents should not be stayed from removing the yacht Patricia from the territorial limits of the United States. This application represents an attempt by plaintiff, ICC, to restrain removal of assets believed by ICC to be owned by defendant Robert Vesco pending further proceedings in this case.

The authority on which we seek this relief is the Manor Nursing case and the power of this Court under the 1933 act to restrain the commission of a fraud.

THE COURT: Mr. Camhy, I think Mr. Auspitz has something to say.

MR. AUSPITZ: Your Honor, may I make a brief application before Mr. Camhy makes his application?

We have advised Mr. Vesco that Paul, Weiss cannot represent him in the application of ICC, because we have represented ICC in the past, and we may have a conflict of interest.

There was an attempt to serve Mr. Vesco in the Bahamas on July 30th. His time to respond to that attempt at valid service was to have expired on August 20th, which I believe is Monday. Mr. Vesco must now obtain new counsel and make a decision whether or not to appear in this action and,

if to appear, then how to respond, and although I am not entering an appearance here today by consenting to jurisdiction, I would like to request an extension of time for Mr. Vesco to appear in this action and to respond to the complaint.

MR. CAMIY: That application is respectfully opposed, your Honor. An extension of time to appear I don't think is appropriate under the circumstances of this case. An extension of time to respond may be a different situation, but I think Mr. Vesco has been aware of the problem for a long time. The service was made in notorious fashion, received considerable notereity. He has known about this. He has had this decision on his mind for a long time, and he should know whether he wants to make a voluntary appearance or leave his in personam rights on the floor.

We believe our service is good. Mr. Vesco has many alternatives open to him, and I am sure he is well advised. If he wishes time to bring a response, I think that would present a different question.

THE COURT: Is there anybody here representing Mr. Vesco in this matter?

MR. AUSPITZ: No, your Honor. There is not. As I say, we were only able to advise him recently, in the past week, that we would not be able to represent him. This was because of the attempted service on July 30th, only a week

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ago. The attorney in charge, Mr. Liman, has been in Europe.

The question of whether or not to appear is a difficult one, on which Mr. Vesco should have the advice of counsel, and I think it is unfair to require him to make that decision either without counsel or with counsel who would be hastily briefed and advised.

I might point out that although special counsel for ICC was appointed back in March, the action was not brought until early in June, and this attempted service was not until the 30th of July. So I think a brief extension would not be an unreasonable delay.

THE COURT: Did you say that Mr. Liman was in Europe?

MR. AUSPITZ: Yes, sir.

MR. CAMHY: If your Honor will consider the nature of the application, it says Mr. Vesco would like time in which to decide whether to flout the processes of this Court or whether to come in.

THE COURT: Well, I am not sure what his motives are, Mr. Camhy, but certainly I think he ought to have counsel to advise him on this. What would be the harm of giving him a one-week extension?

MR. CAMHY: To appear, your Honor? It seems to me if he is going to appear he needs time to get counsel and to

decide whether to respond. But to decide whether he wishes to become subject to this jurisdiction voluntarily or leave us to our remedies standing on a valid service made upon him, this is a very simple decision, based on a factual background which he has had for months, in a situation in which he has been embroiled for months.

Now, he knows he has been avoiding America. This is world-notorious, Mr. Vesco's desire not to be in the United States.

It seems to me whether to accept the service gracefully or to leave him to waive his rights is a decision which he can make. I have no doubt, in the circumstances, that he has been advised constantly as to what his legal rights are as to a presence in the United States or appearing for litigation, and for Mr. Auspits now to say that he needs legal advice, not to answer but to appear, I think ignores a six-months history of Mr. Vesco evading the processes of the United States laws.

MR. AUSPITS: Your Honor, I think the only action in which Mr. Vesco was attempted to be served was the SEC action. I think this is the first time this has come up since then. We have not been advised -- Mr. Camhy hasn't shown in any way how ICC would be prejudiced by an extension.

I admit there is a background here and that because

we may have a conflict I am not going to address myself to any of these problems. I think, though, that in fairness to Mr. Vesco this extension should be granted.

THE COURT: I think I am going to give Mr. Vesco an extension of one week to appear and to answer.

MR. AUSPITZ: Thank you, your Honor. May I submit an order?

THE COURT: Yes.

MR. AUSPITZ: May I be excused?

MR. CAMHY: Does that apply to this order to show cause as well?

THE COURT: No.

MR. AUSPITZ: Thank you, your Honor.

THE COURT: No; it doesn't apply to this order to show cause. At least, I hadn't thought it would.

MR. CAMHY: Would you like to stay, Mr. Auspitz?

MR. AUSPITZ: I understood that this did not apply. I gather this is a boat which ICC says belongs to Mr. Vesco. I suppose other counsel would say otherwise. I don't think this concerns me in any way.

(Mr. Auspitz left the courtroom.)

THE COURT: All right. If you want to go ahead, Mr. Camhy --

MR. CAMHY: Well, I was merely wishing to report,

your Honor, that we have received no papers in opposition to this order to show cause, no appearance by any lawyer in respect of the application to stay the removal of the ship or to stay Mr. Vesco or any of his agents or successors or assigns from removing the boat.

I understand -- and this will be stated to you at greater length, in greater detail, by representatives of Internal Revenue and Customs, that there is an application in the State of Florida to prevent the removal of the boat on rights asserted by the Customs Service -- and I will let them speak for themselves, but at the present time we have received no opposition from any party, Mr. Vesco or anybody else, opposing this motion.

Now, if we do hear opposition in court today, that will be the first official opposition that we have heard.

THE COURT: All right.

MR. CHRISTY: If it please the Court, my name is Arthur Christy, and I was retained yesterday morning by Andean Credit S. A., which is the owner of the yacht Patricia. This is a Panamanian corporation, and I am advised no part of which is owned by Vesco or any members of his family.

Perhaps I ought to explain to the Court why we are here, and, incidentally, I might say we didn't get a copy of the papers until yesterday afternoon. We have not served

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anything on Mr. Butowsky.

The yacht Patricia came into Miami about two weeks ago, I think, and at that time there was an allegation by Customs that it belonged to Mr. Vesco, and therefore it was seized pending determination of whether it was Mr. Vesco's yacht and he had to pay the duty as an American citizen bringing something into the United States.

Andean Credit, the owner of the Yacht, appeared in that action down in Miami, and I have only gotten these facts by telephone, and I think I am correct, your Honor: Andean counsel down there made an application to dissolve the seizure by the Customs, and at that time the Court in Miami apparently directed the United States Attorney to file the normal forfeiture proceedings in respect of the yacht, and I understand that he was told to do that by noon on Friday, August the 10th.

When he appeared, just prior to that and in connection with the order that issued out of this Court, which permitted ICC to bring an ancillary proceeding in Florida, the ICC representative appeared there and explained that this order had been issued out of the New York Court.

On Friday, the 10th, they came back before the Judge, who I think is Judge Mertens -- I am not entirely sure. The Judge, when he found that the United States Attorney was not prepared to file the forfeiture proceeding, which he is

required to do under the law -- apparently not feeling that he had sufficient evidence or probable cause to establish that it was Mr. Vesco's yacht -- and also the Customs came into Court and asked for a stay, which I understand was denied --

THE COURT: A stay of what?

MR. CHRISTY: A stay of the proceedings down there. That was denied. But since the Andean people had appeared, representatives of Andean had appeared in that Court, the Court in effect issued a TRO against the representatives of Andean from removing the yacht pending a determination by this Court on this particular motion.

The issue of ownership of the yacht was never argued before the Miami court, because, as I say, the United States Attorney was apparently unwilling to file the normal forfeiture proceeding, which I think is quite significant.

THE COURT: What is the normal forfeiture proceeding?

MR. CHRISTY: I understand -- and I am no expert on this, your Honor -- that under 19 USC 1604, after there is a seizure the United States Attorney must promptly bring an action to determine the validity of the seizure. This is what I am told by counsel, and I took a quick look at Section 1604 this morning, a section with which I must say I am not very familiar, but what I have just given the Court -- and I don't have the actual order or the minutes, which are on their way to

me right now, but this is what I am advised by counsel for Andean down in Miami --

THE COURT: Wouldn't the action be against the Customs Service, that is, an action by Andean --

MR. CHRISTY: No. The Customs seized the yacht, and thereafter counsel for Andean, arguing that it was the owner, sought to dissolve that seizure.

THE COURT: Where did it do that? Where did it bring that proceeding?

MR. CHRISTY: That was in Miami. There was a hearing.

THE COURT: In some lawsuit?

MR. CHRISTY: Some kind of proceeding. But the actual ownership issue was never argued, because I gather that that cannot be determined until the United States Attorney or the Customs files the actual forfeiture papers.

THE COURT: Where the question of ownership would be in issue?

MR. CHRISTY: That's right. I say this, and this is what counsel has indicated to me, that had ICC not appeared in Miami pursuant to the order that issued out of this Court, the Court in Miami would have dissolved the seizure, and the Andean people could have removed their yacht.

Now, I don't think this is what would have been the

MP 11

case, but in view of the order of this Court, the Judge down in Miami instructed counsel for Andean to appear in this proceeding in New York, and in effect he has issued a TRO pending a decision by this Court on this particular motion.

Now, your Honor, I have reviewed the papers submitted by Mr. Butowsky and more particularly the affidavit on which he seeks to restrain Mr. Vesco from removing the yacht, on the basis, presumably, that Mr. Vesco is the owner of the yacht Patricia, and I must say in candor to this Court I have seldom seen a skimpier affidavit under which to issue a temporary restraining order. It is merely on information and belief that the yacht Patricia is the property of the defendant Vesco, and he alleges it is worth about $1,400,000, which is just about correct.

He talks about the change of name, a statement by Vesco's son to the effect that "Daddy owns the yacht", or something like that, that the repairs were paid by Mrs. Meltzer; actually a check was issued on the McKinley Company by Mrs. Meltzer, so his affidavit is not quite accurate.

Also that Vesco --

THE COURT: Who is Mrs. Meltzer?

MR. CHRISTY: Patricia Meltzer is Mrs. Vesco. That is her maiden name.

And he alleges that Vesco is at present a director

Amended complaint filed September 7, 1973.

(596a - 630a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R.J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., INC., IOS LTD., COLUMBUS TRUST COMPANY, LIMITED, BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD. (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK-NEW YORK, Defendants.	:	73 Civ. 2518 (CES) AMENDED COMPLAINT

Plaintiff, by its attorneys David M. Butowsky and Shea Gould Climenko & Kramer, for its complaint herein, alleges upon information and belief:

APPLICABLE TO ALL COUNTS

1. Plaintiff brings this action to recover money damages and other relief by reason of defendants' violation of various provisions of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) and the rules and regulations adopted and promulgated thereunder and by reason of defendants' breach of various state law and common law duties owed by defendants to plaintiff.

2. This Court has jurisdiction of this action by reason of § 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and the principles of pendent jurisdiction.

3. The acts and transactions complained of herein occurred

among other places, within the Southern District of New York.

4. Plaintiff International Controls Corp. ("ICC") is a Florida corporation which has its principal place of business in Thomaston, Connecticut. It is engaged in various diversified business enterprises, and it has plants and offices throughout the United States. The common stock and warrants of ICC are listed on the American Stock Exchange.

5. (a) Defendant Robert L. Vesco ("Vesco") is a United States citizen who, at times relevant to this complaint, by reason of his ownership of more than 24% of ICC's outstanding stock, controlled and dominated ICC and its subsidiaries, and also at various times, controlled and dominated defendants IOS Ltd. and its subsidiaries, defendants Columbus Trust Company, Limited, Bahamas Commonwealth Bank, International Bancorp, Kilmorey Investments, Ltd., Value Capital Ltd., Global Financial Ltd. and Butlers Bank, Ltd., defendant Fairfield General Corporation and its subsidiaries, and defendant Vesco & Co., Inc. At times relevant to this complaint, Vesco has served as chairman of the board of directors, chief executive officer of and consultant to plaintiff ICC' chairman of the board of directors, chairman of the finance and member of the executive committees of defendant IOS Ltd.; a director of defendant Bahamas Commonwealth Bank; director of defendant International Bancorp; director and president of defendant Value Capital Ltd.; a director of defendant Fairfield General Corporation; president and a director of Fairfield Aviation Corporation; and vice president and a director of Skyways Leasing Corporation.

(b) Defendant Frank G. Beatty ("Beatty") is a United States citizen who, at times relevant to this complaint, has served as executive vice president-administration and finance, treasurer, acting chief executive officer and a director of plaintiff ICC; president, vice president, treasurer and direc-

tor of defendant Fairfield General Corporation; vice president, treasurer and a director of Fairfield Aviation Corporation; vice president, treasurer and a director of defendant Skyways Leasing Corporation, as well as vice president, treasurer and a director of defendant Value Capital Ltd.

(c) Defendant Harry L. Sears ("Sears") is a United States citizen who, at times relevant to this complaint, was an attorney representing defendant Vesco and a director of plaintiff ICC.

(d) Defendant Norman LeBlanc ("LeBlanc") is a Canadian citizen. At times relevant to this complaint, he has served as executive vice president, chief financial officer and director of defendant IOS Ltd.; director of defendant International Bancorp; director of defendant Global Holdings Ltd.; president and director of defendant Global Financial Ltd., and president, treasurer and purported shareholder of defendant Kilmorey Investments Ltd.

(e) Defendant Stanley Graze ("Graze") is a United States citizen who, at times relevant to this complaint, has served as portfolio manager for various mutual funds managed by defendant IOS Ltd., including Venture Fund (International) N.V. ("Venture Fund"), Fund of Funds, Ltd. ("Fund of Funds"), IIT, an International Investment Trust ("IIT") and Transglobal Growth Fund, Ltd. ("Growth Fund"). He purportedly was a shareholder of defendant Kilmorey Investments Ltd.

(f) Defendant Milton F. Meissner ("Meissner"), among other things, is a United States citizen who, at times relevant to this complaint, has served as executive vice president, president and director of defendant IOS Ltd., and was a purported shareholder of defendant Kilmore Investments Ltd.

(g) Defendant Ulrich J. Strickler ("Strickler") is a Swiss citizen. At times relevant to this complaint, he has served as consultant to and director of defendant IOS Ltd., president and director of an ICC subsidiary, and director, officer and purported shareholder of Kilmorey Investments Ltd.

(h) Defendant Richard E. Clay ("Clay") is a United States citizen, who, at times relevant to this complaint, has served as vice president-office of the chairman of plaintiff ICC; vice president and a director of defendant International Bancorp; director of defendant Bahamas Commonwealth Bank; president and a director of defendant Value Capital Ltd.; vice president, secretary and director of defendant Fairfield General Corporation; and vice president, secretary and a director of Skyways Leasing Corporation.

(i) Defendant Wilbert J. Snipes ("Snipes") is a United States citizen who, at times relevant to this complaint, has served as a director of plaintiff ICC, director of defendant Bahamas Commonwealth Bank, and senior vice president of American National Bank & Trust of New Jersey.

(j) Defendant Frederic J. Weymar ("Weymar") is a United States citizen who, at times relevant to this complaint, has served as managing director of defendant Butlers Bank, Ltd., president and director of defendant International Bancorp, and a director of defendant Bahamas Commonwealth Bank.

(k) Defendant Gilbert R.J. Straub ("Straub") is a United States citizen who, at times relevant to this complaint has served as director of European Services for plaintiff ICC, a director and senior vice president of defendant Bahamas Commonwealth Bank, and a director and senior vice president of defendant International Bancorp.

(l) Defendant C. Henry Buhl, III ("Buhl") is a United States citizen who, at times relevant to this complaint, has served as director of defendant IOS Ltd. and director of Fund of Funds, Growth Fund, Venture Fund and their respective management companies.

(m) Defendant Ralph P. Dodd ("Dodd") is a United States citizen who, at times relevant to this complaint, was president and a director of defendant Fairfield General Corporation and vice president and a director of ICC.

(n) Defendant George Phillipe ("Phillipe") is a Swiss citizen who, at relevant times, was an officer and director of defendant Bank Cantrade Ltd.

(o) Defendant Joel Grady ("Grady") is a United States citizen who, at times relevant to this complaint, was president and a director of Skyways Leasing Corporation, president and a director of Fairfield Aviation Corporation and vice president and a director of Fairfield General Corporation.

(p) Defendant IOS Ltd. ("IOS") is a nonresident Canadian corporation which is or was engaged in holding a complex of mutual fund management companies, companies engaged in managing real estate investment companies, insurance companies, and various banks. IOS, in December 1971, in exchange for securities of defendant Value Capital Ltd., most of which were subsequently distributed to IOS shareholders, transferred to Value Capital Ltd. certain insurance and real estate management companies and other assets of IOS. IOS, in October 1971, in exchange for certain securities of defendant International Bancorp, most of which were subsequently distributed to IOS shareholders, transferred to International Bancorp various of its banking assets including Orbis Bank GmbH, Overseas Development Bank Geneva, Overseas De-

velopment Bank Luxembourg, Overseas Development Bank Bahamas and Overseas Development Bank Curacao.

(q) Defendant Vesco & Co., Inc. ("Vesco & Co.") is a Delaware corporation dominated and controlled by Vesco. Vesco and his children have transferred to Vesco & Co. certain of their assets including, but not limited to, 846,380 shares of ICC common stock. By reason of his domination and control of Vesco & Co., Vesco & Co. is the alter ego of Vesco. By reason of Vesco's transfer of certain assets, some or all of which may represent fruits of the fraud and wrongdoing alleged herein. to Vesco & Co., Vesco & Co.'s presence in this action is necessary in order to afford plaintiff complete relief and to insure against future violations of the federal securities laws.

(r) Defendant Bahamas Commonwealth Bank Ltd. ("Bahamas Commonwealth Bank") is a Bahamian corporation whose principal executive offices are located in Nassau, Bahamas.

(s) Defendant International Bancorp Ltd. ("International Bancorp") is a Bahamian corporation with its principal executive offices in Nassau, Bahamas. It is a holding company for various banking assets spun-off by defendant IOS (as described in paragraph 5(p) above), and it also owns a majority of the outstanding common stock of the Bahamas Commonwealth Bank.

(t) Defendant Kilmorey Investments Ltd. ("Kilmorey Investments") is a Bahamian corporation which, on or about March 30, 1972, acquired from ICC certain former ICC subsidiaries which held certain shares of preferred and common stock of defendant IOS.

(u) Defendant Value Capital Ltd. ("Value Capital") is a Bahamian corporation which was formed in December 1971,

and became the receptacle of various insurance and real estate management companies and other assets of IOS (as described in paragraph 5(p) above).

(v) Defendant Columbus Trust Company, Limited ("Columbus Trust") is a Bahamian corporation. Until March of 1973, defendant LeBlanc, through subsidiaries of Butlers Bank, Ltd., owned approximately 60% of the outstanding shares of Columbus Trust.

(w) Defendant Global Holdings, Ltd. ("Global Holdings") is a Bahamian corporation which holds the outstanding stock of Global Financial Ltd.

(x) Defendant Global Financial Ltd. ("Global Financial") is a Bahamian corporation which holds certain securities of defendant Value Capital, defendant International Bancorp and defendant Kilmorey Investments, which were acquired from ICC in June 1972.

(y) Defendant Butlers Bank, Ltd. ("Butlers Bank") is a bank formed under the laws of the Bahamas.

(z) Defendant Bank Cantrade Ltd. ("Bank Cantrade") is a bank formed under the laws of Switzerland.

(aa) Defendant Fairfield Aviation Corporation ("Fairfield Aviation") is a New Jersey corporation which was engaged in the general aviation business. On October 18, 1967, ICC acquired all of the issued and outstanding shares of Fairfield Aviation.

(bb) Defendant Fairfield General Corporation ("Fairfield General") is a New Jersey corporation organized on November 19, 1971 as a wholly-owned subsidiary of ICC which on December 9, 1971 acquired from ICC all of the outstanding stock

of Fairfield Aviation. Pursuant to a registration statement filed on Form S-1 with the Securities and Exchange Commission on December 14, 1971, all of the stock of Fairfield General was distributed as a dividend in kind to the shareholders of ICC.

(cc) Defendant Skyways Leasing Corporation ("Skyways") was incorporated in New Jersey on December 23, 1970 and is a wholly-owned subsidiary of Fairfield Aviation. Its sole business is the ownership and operation of a Boeing 707 airplane.

(dd) Defendant Shirley Bailey ("Bailey") is a United States citizen who, at times relevant to this complaint, was secretary of ICC and Vesco's personal secretary.

(ee) Defendant Marine Midland Bank-New York ("Marine Midland") is a banking corporation with offices in the Southern District of New York. Marine Midland was the transfer agent and paying agent for the dividend in kind described in paragraph 5(bb).

(ff) Defendant Allan J. Butler ("Butler") is a Bahamian citizen who, at times relevant to this complaint, was, among other things, president of defendant Butlers Bank.

(gg) Defendant Alwyn Eisenhauer ("Eisenhauer") is a United States citizen who, at times relevant to this complaint, was known as "director of aviation" of plaintiff ICC but, in reality, he was defendant Vesco's personal pilot.

FIRST COUNT

6. Beginning in or about 1970, defendant Vesco and the defendants named in the next paragraph embarked upon a scheme, as set forth hereinafter, by use of the United States mails, means or instrumentalities of interstate commerce and the facilities of national securities exchanges, to defraud plaintiff and its stockholders other than defendants ("its public stockholders"), engaged in acts, practices and courses of business

to be described herein, which have operated as a fraud or deceit upon plaintiff and its public stockholders and have made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in connection with the purchase and sale of securities issued and/or owned by the following companies:

ICC
IOS Ltd.
Linkink Progressive Corporation, S.A. ("Linkink")
American Interland, Inc.
International Bancorp Ltd.
Value Capital Ltd.
Kilmorey Investments, Ltd.
Fairfield General Corporation
Fairfield Aviation Corporation

7. In engaging in the aforesaid scheme and fraudulent acts and practices, defendant Vesco has acted in concert with and has been aided and abetted by defendants LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Snipes, Weymar, Straub, Buhl, Dodd, Phillipe, Bailey, Grady, IOS, Vesco & Co., Bahamas Commonwealth Bank, International Bancorp, Value Capital, Kilmorey Investments, Butlers Bank, Bank Cantrade, Fairfield General, Fairfield Aviation and Skyways and by other persons and entities. The following participants in the aforesaid scheme, acts and practices will be referred to as "defendant Vesco and his group": defendants Vesco, LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Straub, Weymar, Snipes, Dodd, Grady and Bailey.

8. The aim and object of the aforesaid scheme was for defendant Vesco and his group, by using the assets of plaintiff ICC and its subsidiaries, to obtain and arrogate to themselves control of IOS and its assets and of other assets of ICC, outside of ICC and at ICC's expense. As part of and in connection with the scheme, Vesco and his group caused ICC and its sub-

sidiaries to purchase IOS securities and properties and to sell the IOS securities and properties to entities controlled by defendant Vesco and his group.

9. In furtherance of the scheme, defendant Vesco and his group caused ICC and its subsidiaries to engage in a series of transactions by which Vesco and his group gained control of IOS. On or about September 4, 1970, defendant Vesco and his group caused ICC Investments Ltd. ("IIL"), a subsidiary of ICC, to enter into a loan agreement with IOS pursuant to which IIL advanced $5,000,000 to IOS and received in exchange a note of IOS payable on May 24, 1971, together with warrants to purchase three million shares of IOS common stock. Thereafter, Vesco and his group caused the loan agreement to be amended, and thereafter caused the liability created by the agreement as amended to be settled by the payment to IIL of $5,500,000, the repurchase of the warrants of IOS for $350,000, and the delivery to IIL of 6,000,000 shares of IOS common stock.

10. In connection with the purchase by IIL of the IOS stock, defendant Vesco and his group failed to disclose to ICC, the other members of its board of directors and its public shareholders that the transactions were designed to enable defendant Vesco and his group to carry out their scheme to acquire the IOS stock and assets for themselves, and that defendant Vesco and his group intended to have IIL hold the stock at their disposal and for their benefit, until they could acquire it for themselves and intended to turn the IOS assets to their own private purposes to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

11. In furtherance of the aforesaid scheme, and simul-

taneously with the transactions described in the preceding paragraph hereof, defendant Vesco and his group caused ICC, through its wholly-owned subsidiary American Interland Inc., to purchase, for a price which was $3,500,000 above the market price, a large block of IOS preferred stock.

12. In connection with the acquisition of the IOS preferred stock, defendants Vesco and his group failed to disclose to ICC, the other members of its Board of Directors and its public shareholders that the purchase was designed to enable defendants to carry out their scheme to acquire the IOS stock and assets and the control thereof for themselves, and that defendant Vesco and his group intended to have American Interland Inc. hold the stock at their disposal and for their private benefit until they could acquire it for themselves. In addition, defendant Vesco and his group failed to disclose that defendant Butlers Bank was aiding defendant Vesco in the scheme in return for various improper benefits which would be paid or given to defendant Butlers Bank and its managing director, defendant Weymar.

13. In furtherance of and as part of his scheme, Vesco and his group caused International Bancorp to sell to defendant Weymar 30% of its stock in exchange for all of the stock of Bahamas Commonwealth Bank and caused International Bancorp to distribute the remainder of its stock to IOS stockholders.

14. International Bancorp was a holding company which was a 70% subsidiary of IOS and which had a shareholders' equity in excess of $17,400,000.

15. In connection with the transactions by which defendant Weymar acquired 30% of the stock of International Bancorp, defendant Vesco and his group failed to disclose to ICC, the

independent members of ICC's Board of Directors and the public stockholders of ICC that defendant Weymar was acting in concert with defendant Vesco and that the sale to defendant Weymar was part of the scheme by which defendant Vesco and his group intended to acquire IOS assets. In addition, in connection with the sale, defendant Vesco and his group failed to disclose that defendants Butlers Bank and Weymar were paid substantial premiums at the expense of IOS shareholders including ICC, and that the assets which Bahamas Commonwealth Bank owned when it was acquired by International Bancorp had been sold to it by Butlers Bank shortly before at grossly inflated prices far in excess of their actual value and at a profit to Butlers Bank.

16. As part of and as a further step in the scheme, in or about December 1971, defendant Vesco and his group caused IOS to transfer certain assets to Value Capital in exchange for shares of stock in Value Capital which were later distributed to IOS shareholders, including ICC.

17. As part of and as a further step in the scheme, defendant Vesco and his group caused ICC to transfer all of its interests in IOS and former IOS properties, including its stock in International Bancorp and Value Capital, to newly formed companies purportedly unrelated to Vesco, but, in reality, under the control of defendant Vesco and his group. Viz:

(a) On or about March [illegible], 1972, Vesco and his group caused ICC to sell its subsidiaries which held IOS stock to Kilmorey Investments, a shell corporation, for a total consideration valued by defendant Vesco and his group at $2,240,000. Only $200,000 was paid in cash. A large part of the remaining consideration, valued at $1,740,000, was based upon a contingent obligation of the subsidiaries acquired by Kilmorey Investments from ICC to indemnify ICC against tax liabilities arising out of

ICC's investments related to IOS. The consideration was illusory because such an obligation was likely never to arise and, in fact, never has.

(b) In connection with the sale of these ICC subsidiaries to Kilmorey Investments, defendants failed to disclose to ICC and its public stockholders that the sale was part of and in furtherance of defendant Vesco's scheme to obtain control of IOS, that Kilmorey Investments, while purportedly owned by others, was, in reality, controlled and dominated by Vesco, that the consideration paid by Kilmorey Investments was illusory and that IOS possessed substantial hidden assets, including the net asset value of shares in IOS funds which the purchasers would not or could not redeem and that Vesco and his group planned to loot IOS and its affiliates to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

(c) On or about June 3, 1972, defendant Vesco caused ICC to divest itself of all of its stock in International Bancorp and Value Capital (which had been spun-off by IOS) by selling it, together with four notes in the approximate total amount of $1,872,505, to Global Financial for $7,350,000 in five-year notes which carried five percent interest, plus Global Financial's assumption of the contingent tax indemnification agreement referred to above in subparagraph (a) of this paragraph.

(d) In connection with the sale to Global Financial, defendants failed to disclose to ICC, the independent members of its Board of Directors and its public stockholders that the sale was part of and in furtherance of defendant Vesco's scheme to obtain control of IOS for the purpose of looting IOS and its affiliates, that Global Financial had been purchased by Global Holdings, all of whose stock was, upon information

and belief, owned by defendant LeBlanc, as a shell from International Bancorp, and that while Global Financial was purportedly owned by LeBlanc, it was, in reality, controlled and dominated by Vesco.

18. Subsequent to the consummation of the transaction referred to in paragraph "17(a)" and "17(c)" above, defendant Vesco and his group and others proceed to and did loot IOS and its affiliates by misappropriating assets (including securities issued by United States companies) of certain funds known as the "Dollar Funds" (Venture Fund (International) N.V.; Fund of Funds Ltd.; IIT, an International Investment Trust; and Transglobal Growth Fund, Ltd.), which were managed by IOS subsidiaries, and the assets of two closed-end real estate funds (Investment Properties International Limited and Global Natural Resources Properties Limited) managed by subsidiaries of Value Capital. Defendant Columbus Trust participated in the misappropriation of the assets as described above.

19. Various lawsuits have been commenced or threatened against plaintiff seeking to hold plaintiff liable for damages suffered by the shareholders of IOS and its affiliates, the shareholders and unit holder of the Dollar Funds and the closed-end real estate funds referred to in paragraph "18" and others, as a result of the various wrongful acts of defendant Vesco and his group and others described hereinabove including, but not limited to, the looting of IOS and its affiliates as described in more detail in paragraph "18" hereof.

20. As a result of the foregoing, plaintiff may be held liable to the shareholders of IOS and its affiliates, the shareholders and unit holder of the Dollar Funds and the closed-end real estate funds referred to in paragraph "18" and others, in which event plaintiff is entitled to indemnification from defen-

dant Vesco, Columbus Trust and all other defendants who are alleged to have participated in the wrongdoing described herein for the full amount of any such liability plus the cost of defending such lawsuits, including attorneys' fees.

21. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

SECOND COUNT

22. Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "17", inclusive, hereof as though fully set forth herein.

23. In November 1970, ICC purported to declare a dividend in kind of all of the outstanding shares of Fairfield Aviation. Purportedly to provide a holding company structure for the resulting public company, defendant Vesco caused ICC to organize Fairfield General and, on December 9, 1971, to transfer all of the outstanding shares of Fairfield Aviation to Fairfield General in exchange for all of the outstanding shares of Fairfield General, and thereupon to purport to modify the dividend in kind to provide that it would consist of all of the outstanding shares of Fairfield General owned by ICC.

24. The exchange by ICC of all of the outstanding shares of Fairfield Aviation for all of the outstanding shares of Fairfield General was effected and the purported dividend in kind of the Fairfield General shares was declared in furtherance of and as an integral part of defendant Vesco's scheme to obtain control of IOS and its assets and of other assets of ICC, independent of ICC and at ICC's expense. In particular, defendant Vesco and his group agreed that they would increase the value

of the companies to be spun off by the dividend in kind and thereby use the proposed dividend in kind as a vehicle by which Vesco and his group would acquire for their own personal use and for the use of IOS various assets of ICC, which would ultimately include a Boeing 707 airplane, to be lavishly renovated according to defendant Vesco's specifications, and to be paid for, operated and maintained at the expense of ICC and its public shareholders.

25. In furtherance of and as part of the aforesaid scheme, sometime after the formation of Skyways, which was incorporated on December 23, 1970, Vesco and his group caused ICC to contribute to Skyways "as of September 30, 1970" aircraft having an aggregate market value of $363,000 (before assumed debt of approximately $183,000).

26. In furtherance and as part of the aforesaid scheme, on June 15, 1971, defendant Vesco caused defendant Skyways to purchase a Boeing 707 airplane from Pan American Airways for $1,375,000, of which $343,750 was paid with funds contributed to Skyways by ICC. As security, Skyways granted to Pan American Airways a first mortgage on the Boeing 707.

27. In furtherance of and as part of the aforesaid scheme, defendant Vesco caused ICC to lease the Boeing 707 from Skyways for the three months ended September 30, 1971 at a total cost to ICC of $439,000. In addition, defendant Vesco caused defendant Beatty to execute a lease with Skyways pursuant to which ICC purportedly leased the Boeing 707 for a period of five years at a monthly rental of $100,000 for each of the months of October, November and December 1971; $83,000 per month for each of the months January through December 1972; and $47,000 per month for each of the months January 1973 through September 1976 or

for a total rental from January 1971 to September 1976 of more than $3,500,000.

28. In connection with the dividend in kind, Fairfield General filed a registration statement with the Securities and Exchange Commission on Form S-1 and distributed a prospectus to the stockholders of ICC which was materially false and misleading. The registration statement was signed by defendants Vesco, Dodd, Beatty and Clay.

29. In connection with the distribution of the dividend in kind, defendant Vesco and his group, and the registration statement and prospectus referred to in paragraph "28" above, failed to disclose to ICC, its Board of Directors and its stockholders:

(a) that the full terms of the lease had never been disclosed to the ICC Board of Directors;

(b) that the lease was inequitable and unfavorable to ICC, because, among other reasons, it provided for termination at Skyways' option, in the event of sale or transfer of ownership of the airplane, on five days' prior written notice to ICC;

(c) that the lease was inequitable and unfavorable to ICC because, among other reasons, it provided that any improvements made by ICC belonged to Skyways upon termination of the lease;

(d) that the payment schedule under the lease was designed and constructed by defendants Vesco and his group without relation to the actual value of the services to be provided to ICC under the lease but solely to enable Skyways to amortize, through payments by ICC, the cost to Skyways of the Boeing 707 plus a proposed $350,000 modification (which ultimately cost over

$600,000) of the interior of the aircraft desired by Vesco. Thus, rental payments were extremely high during the first few months of the lease term and decreased to $47,000 per month starting in January 1972. The basic $47,000 per month payment had been computed in order to provide Skyways with the amount required for debt service, aircraft liability insurance and a ten-percent profit margin to Skyways;

(e) that a $200,000 note given to ICC by Skyways in return for advances made by ICC was subordinate to all other obligations of Skyways and that Skyways did not have sufficient income to enable it to pay the note when due;

(f) that the lease was merely a device by which Vesco would force ICC to pay for an airplane and its operation and maintenance for his personal use although the airplane was not necessary to ICC's or its subsidiaries', including Skyways', business and, indeed, was not intended to be used in such business;

(g) that the renovations which defendant Vesco and his group planned for the interior of the airplane included such features as a discotheque area witha wooden dance floor, a bar and "entertainment center" (including a stereo receiver, tape decks, rhythmic lighting, movie screen and projector and wine rack), a master bedroom, a guest bedroom and a sauna and soaking bath and shower facility;

(h) that the planned renovations would render the airplane commercially useless;

(i) that Fairfield General and its subsidiaries were not independently viable business entities, but were mere vehicles, whose principal business was to be the ownership and operation of the Boeing 707;

(j) that the dividend in kind was never properly and validly declared by ICC's Board of Directors;

(k) that the reason for the dividend was not, as claimed in the prospectus, the reorganization of ICC, but to enable Vesco and his group to exercise greater domination and control over Fairfield General and its subsidiaries than they were able to exercise through ICC;

(l) that the dividend would be of no substantial benefit to the public shareholders of ICC.

30. Defendant Vesco and his group deceived ICC, the independent members of its Board of Directors and its public stockholders into continuing its payments under the lease, and into giving up direct control over the leasing company by distributing the stock of Fairfield General (a) by falsely representing to ICC that the use of the Boeing 707 would not cost ICC any money since it was being used solely for defendant Vesco's activities on behalf of non-ICC entities and that ICC would be reimbursed by such entities for the use of the airplane, and (b) by falsely representing, at the stockholders' meeting in July 1972, that ICC had not spent a single dollar in 1971 for the cost of the airplane that was not being reimbursed. By late 1972, while ICC expenses in connection with the aircraft amounted to more than $1,500,000, it had been reimbursed less than 25% of that amount. After complaints by ICC's directors with respect to the failure of ICC to obtain reimbursement for these expenses, defendant Vesco claimed that, contrary to earlier representations, a considerable number of his flights were in connection with ICC business and that ICC was not entitled to reimbursement for these, and defendant Vesco has repeatedly refused to obtain reimbursement from IOS and related entities for the use of the aircraft.

31. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

THIRD COUNT

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30", inclusive, above as though fully set forth herein.

33. By reason of the foregoing, defendant Vesco and his group engaged in self-dealing and have used the assets of ICC for their own personal aggrandizement and benefit contrary to and in breach of their fiduciary duties as directors and/or officers of ICC, and ICC has sustained damages in an amount which cannot precisely be ascertained except by an accounting, and is entitled to punitive and exemplary damages.

FOURTH COUNT

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30" above, inclusive, as though fully set forth herein.

35. The acquisition and sale of the stock and assets of IOS and the lease of the Boeing 707 aircraft and the contributions made to Skyways and Fairfield General by ICC were not necessary or proper to ICC's business and fulfilled no proper corporate purpose. The IOS transactions and the contributions to Fairfield General and Skyways and the lease of the aircraft and the payments made thereunder by ICC, at defendant Vesco's direction, constituted a waste and diversion of corporate assets.

36. By reason of the foregoing, ICC has sustained damages in an amount which cannot be ascertained except by an accounting.

FIFTH COUNT

37. Plaintiff repeats and realleges each and every

THIRD COUNT

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30", inclusive, above as though fully set forth herein.

33. By reason of the foregoing, defendant Vesco and his group engaged in self-dealing and have used the assets of ICC for their own personal aggrandizement and benefit contrary to and in breach of their fiduciary duties as directors and/or officers of ICC, and ICC has sustained damages in an amount which cannot precisely be ascertained except by an accounting, and is entitled to punitive and exemplary damages.

FOURTH COUNT

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30" above, inclusive, as though fully set forth herein.

35. The acquisition and sale of the stock and assets of IOS and the lease of the Boeing 707 aircraft and the contributions made to Skyways and Fairfield General by ICC were not necessary or proper to ICC's business and fulfilled no proper corporate purpose. The IOS transactions and the contributions to Fairfield General and Skyways and the lease of the aircraft and the payments made thereunder by ICC, at defendant Vesco's direction, constituted a waste and diversion of corporate assets.

36. By reason of the foregoing, ICC has sustained damages in an amount which cannot be ascertained except by an accounting.

FIFTH COUNT

37. Plaintiff repeats and realleges each and every alle-

gation contained in paragraphs "1" through "5" and "26" through "30" above, inclusive, as though fully set forth herein.

38. In early January of 1973, ICC instructed defendant Eisenhauer to ground the Boeing 707 and not to incur any further expenses in connection with the aircraft unless in connection with activities specifically authorized in advance by ICC. ICC also instructed Eisenhauer to reduce the size of his staff to the minimum number permitted by applicable regulations. Eisenhauer failed and refused to follow ICC's instruction.

39. In connection with negotiations between ICC, Fairfield and Skyways for consent to fly the Boeing 707 to Beirut for the purpose of demonstrating the 707 to a potential purchaser, ICC entered into an agreement with Eisenhauer pursuant to which Eisenhauer, in consideration for payment of $16,000 termination pay, agreed to fly the airplane in demonstration flights for purposes of sale. ICC instructed Eisenhauer to fly the Boeing 707 from Texas to Newark, New Jersey.

40. In violation of his instructions, defendant Eisenhauer flew the Boeing 707 to Nassau, where he picked up defendants Vesco, Beatty and others and flew them to Beirut and back to Nassau, where the Boeing 707 is being wrongfully held by defendants Skyways, Vesco and his group.

41. By reason of the foregoing, ICC is being deprived of the use of the Boeing 707 which it has leased from defendant Skyways, and the Boeing 707 is being and has been converted by defendants Vesco, Eisenhauer and Skyways to their own use.

SIXTH COUNT

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5", "26" through "30", and "38" through "40", as though fully set forth herein.

43. By reason of the foregoing, defendant Eisenhauer has breached the agreement referred to in paragraph "39" hereof, has been unjustly enriched in an amount of $16,000, and ICC has sustained damages in the amount of $16,000.

SEVENTH COUNT

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "26" through "30" above as though fully set forth herein.

45. The lease between ICC and defendant Skyways was unfair and harmful to plaintiff ICC, its approval by the ICC Board of Directors or by the ICC stockholders was fraudulently obtained, it was entered into solely at the direction of Vesco and his group and was maintained and continued upon the basis of misrepresentations to ICC made by defendant Vesco.

46. By reason of the foregoing, the lease between Skyways and ICC is null, void, and of no further effect, and ICC is entitled to an accounting to recover from Skyways all payments heretofore made by ICC pursuant to the lease.

EIGHTH COUNT

47. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "26" through "30" above as though fully set forth herein.

48. In or about November 1972, as a result of the wrongful actions of defendant Vesco and his group, the Securities and Exchange Commission commenced an action in this Court against ICC and some of the defendants in this action alleging numerous violations of the securities laws and seeking an accounting. In connection with that action, an injunction was obtained prohibiting ICC from, among other things, making payments under the lease with defendant Skyways.

49. Defendant Skyways, at the direction of defendant Vesco and his group, nevertheless and in order to perfect their scheme to obtain possession of the Boeing 707, purported to terminate the lease and instructed Eisenhauer to fly the plane to Nassau, Ba-

hamas and Beirut, Lebanon. Eisenhauer, knowing that the plane was under lease to ICC, and having been instructed by ICC to fly the plane to Newark, New Jersey, nevertheless wrongfully flew the plane to Nassau and Beirut.

50. By reason of the foregoing, defendant Skyways has breached the lease and deprived plaintiff of the use of the Boeing 707.

NINTH COUNT

51. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "26" through "30" hereof as though fully set forth herein.

52. In connection with defendant Vesco and his group's wrongful scheme to convert the assets of ICC to his own use and benefit, he incurred for and on behalf of ICC, and caused ICC to pay, numerous legal fees which were in fact for defendant Vesco's own personal business; and to reimburse legal expenses that were not properly reimbursed.

53. In addition, defendant Vesco caused ICC to become a defendant in the action brought by the Securities and Exchange Commission, and in other legal actions resulting in waste of ICC's assets.

54. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

TENTH COUNT

55. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "26" through "30" hereof as though fully set forth herein.

56. In connection with the scheme described above, defendant Vesco and his group caused ICC to pay various improper fees, emoluments and other benefits to various defendants, including defendants Sears, Buhl and Clay, and to other persons.

57. Such payments served no proper corporate purpose, were excessive in amount, and constituted corporate waste.

58. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

ELEVENTH COUNT

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" above as though fully set forth herein.

60. Defendant Vesco caused ICC Investments Limited ("IIL"), a subsidiary of ICC, to enter into an agreement with defendant IOS, dated January 25, 1971, entitled "Second Amendment to Purchase Agreement", pursuant to which, inter alia, IOS agreed to reimburse IIL, ICC, or their respective employees, for all travel expenses and other out-of-pocket expenses incurred in connection with matters pertaining to the business of defendant IOS and its subsidiaries.

61. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant IOS, pursuant to which ICC agreed to make defendant Vesco available to defendant IOS as a consultant. Such agreement requires defendant IOS (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the performance of consulting services to defendant IOS, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to in-

demnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant IOS.

62. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant Kilmorey Investments, pursuant to which ICC agreed to make defendant Vesco available to defendant Kilmorey Investments as a consultant. Such agreement requires defendant Kilmorey Investments (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the performance of consulting services to defendant Kilmorey Investments, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant Kilmorey Investments.

63. Defendant Vesco caused ICC to enter into an agreement with defendants Global Financial and Global Holdings dated June 3, 1972, pursuant to which ICC sold to defendant Global Financial, among other things, shares owned by ICC in defendants International Bancorp and Value Capital and agreed to make available to International Bankcorp and Value Capital personnel of ICC. Such agreement requires defendants Global Holdings and Global Financial (i) to reimburse ICC for expenses incurred by ICC personnel in the performance of consulting services to de-

fendants International Bancorp and Value Capital, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify and hold harmless ICC and ICC's personnel against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of ICC personnel as consultants to defendants International Bancorp and Value Capital or their subsidiaries.

64. ICC has incurred reimbursable expenses for the year 1972 in connection with the agreements referred to in paragraphs "60" through "63" above in the aggregate amount of $3,109,341. Of such amount, an aggregate of $1,252,484 was paid to ICC either by or for the account of defendants IOS, Kilmorey Investments, Global Holdings and Global Financial; and $500,000 was, according to an advice of credit from the defendant Bahamas Commonwealth Bank, deposited to the account of ICC, but was blocked for reasons unknown. Accordingly, there remains a balance of $500,000 being wrongfully withheld from ICC and $1,856,857 (including said $500,000) due and owing to ICC.

65. Defendant Bahamas Commonwealth Bank has failed and refused to pay the amount wrongfully withheld and defendants IOS, Kilmorey Investments, Global Holdings and Global Financial have failed and refused to pay the balance due and owing to ICC although payment has been duly demanded.

66. By reason of the foregoing, plaintiff has sustained damages in the amount of $1,856,857, plus interest.

TWELFTH COUNT

67. Plaintiff repeats and realleges each and every alle-

gation made in paragraphs "1" through "17" and "23" through "30" hereof as though fully set forth herein.

68. In selecting defendant Marine Midland as the transfer and paying agent for the dividend in kind described in paragraphs "5(bb)" and "23" hereof, plaintiff relied on Marine Midland's reputation and ability to fulfill the duties of transfer and paying agent with the care and skill appropriate to that office.

69. In paying the dividend in kind, Marine Midland failed to act with the customary care and skill appropriate to a transfer and paying agent and, indeed, was grossly negligent in that Marine Midland failed to obtain proper corporate authorization from ICC to pay such dividend, and paid such dividend even though it knew or should have known that the purported dividend had never been validly authorized and could not properly be paid.

70. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

THIRTEENTH COUNT

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30" above as though fully set forth herein.

72. In furtherance of and as part of the aforesaid scheme, and in order to attempt to insulate himself from liability in connection with said scheme, defendant Vesco on or about September 25, 1972 caused ICC to enter into a consulting agreement (the "Consulting Agreement") with him which provided, inter alia, that ICC would indemnify and hold him harmless for any losses, claims, damages, fines, expenses or liabilities arose out of or were based upon any act or failure to act by him in his capacity

of a director, officer, employee, agent or consultant of ICC or any other corporation or entity which as the representative of ICC he served as such at the request of ICC.

73. In obtaining approval of the Consulting Agreement by the Board of Directors of ICC, defendant Vesco made misrepresentations of material facts and failed to disclose certain material facts to ICC, the independent members of ICC's Board of Directors and the public stockholders of ICC including, inter alia:

(a) that the true purpose of the Consulting Agreement was to attempt to insulate defendant Vesco from liability in connection with the aforesaid scheme and to attempt to impair ICC's right to recover from defendant Vesco any damages it sustained by reason of said scheme;

(b) that the Consulting Agreement was inequitable and unfair to ICC in that, among other things, it purported to deprive ICC of the right to recover from Vesco any damages it sustained by reason of said scheme;

(c) that the compensation of $120,000 provided for in the Consulting Agreement had no relation to the actual value of the services Vesco was to perform for ICC during the term of the agreement and, in fact, that Vesco had no intention of performing any service which would be beneficial to ICC;

(d) that the true purpose of the Consulting Agreement was to retain for Vesco control of ICC and its Board of Directors while making it appear that he had relinquished his control of ICC and its Board of Directors.

74. Had defendant Vesco not made the misrepresentations and had he disclosed the material facts he failed to disclose, as described in paragraph "73" above, the Board of Directors of

ICC would not have approved the Consulting Agreement.

75. Plaintiff has no adequate remedy at law.

FOURTEENTH COUNT

76. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17", "23" through "30" and "72" through "74" as though fully set forth herein.

77. Between September 25, 1972 and the present, ICC has paid defendant Vesco various amounts pursuant to the Consulting Agreement for which defendant Vesco performed no services for ICC. In addition, ICC has, pursuant to the Consulting Agreement, reimbursed defendant Vesco for expenses which were not properly chargeable to ICC but rather were incurred by Vesco in connection with his own personal affairs.

78. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

WHEREFORE, plaintiff demands judgment as follows:

(a) On the First Count:

(1) directing that the defendants who participated in the wrongdoings alleged therein account to plaintiff for damages sustained by virtue of the acts of defendants as set forth therein; and

(2) against the defendants who participated in the wrongdoings alleged therein in an amount equal to any amount plaintiff is required to pay to others by reason of such wrongdoings plus the costs, including attorneys' fees, incurred by plaintiff in defending any actions brought against it by reason of such wrongdoings;

(b) On the Second Count:

(1) directing that the defendants account to plaintiff for all damages sustained by virtue of the acts of defendants set forth therein; and

(2) declaring that the transaction in which ICC transferred all of the outstanding shares of Fairfield Aviation to Fairfield General in exchange for all of the outstanding shares of Fairfield General is null and void; and

(3) declaring that the dividend in kind, distributed by ICC consisting of shares of Fairfield General distributed to the shareholders of ICC, is null and void; and

(4) declaring that the transactions in which ICC made contributions of assets to Fairfield Aviation and Skyways are null and void; and

(5) declaring that the lease between ICC and Skyways entered into on or about June 15, 1971 is null and void; and

(6) declaring that the Boeing 707 aircraft belongs to ICC subject to any outstanding indebtedness to Pan American Airways, Inc.;

(c) On the Third, Fourth, Eighth, Ninth, Tenth, and Twelfth Counts, directing that the defendants who participated in the wrongdoings alleged therein account to plaintiff for all damages sustained by virtue of the acts of defendants as set forth therein;

(d) On the Fifth Count, judgment declaring that:

(1) the Boeing 707 aircraft belongs to ICC, subject to any outstanding indebtedness to Pan American Airways, Inc.; and

(2) directing that defendants forthwith deliver the Boeing 707 to plaintiff;

(e) On the Sixth Count, against defendant Eisenhauer in the amount of $16,000, together with interest thereon;

(f) On the Seventh Count:

(1) directing that the defendants account to plaintiff for all damages sustained by virtue of the acts of defendants set forth therein;

(2) declaring that the lease between ICC and Skyways entered into on or about June 15, 1971 is null and void;

(g) On the Eleventh Count, damages in the amount of $1,856,857, together with interest thereon;

(h) On the Thirteenth Count, declaring that the Consulting Agreement is null and void;

(i) On the Fourteenth Count, directing that defendant Vesco account to plaintiff for all damages sustained by virtue of the acts of defendants as set forth therein;

(j) Enjoining Vesco & Co., pendente lite and permanently, from transferring, voting or otherwise exercising any rights with respect to the shares of ICC held by it as transferee of said shares from defendant Vesco or members of his family; and

(k) Enjoining defendants, pendente lite and permanently, from using the assets of plaintiff ICC or its subsidiaries or Vesco & Co. for their own purposes to the loss and detriment of ICC and its shareholders,

together with such other and further relief as to this Court shall seem just and proper, together with interest and the costs and disbursements of this action.

DAVID M. BUTOWSKY, ESQ.
230 Park Avenue
New York, New York
(212) 725-5360

SHEA GOULD CLIMENKO & KRAMER

By _____
A Member of the Firm
330 Madison Avenue
New York, New York 10017
(212) 661-3200

Attorneys for Plaintiff

INDEX NO. 73 Civ. 2518 (CES)

UNITED STATES DISTRICT COURT

~~SOUTHERN~~ DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

AMENDED COMPLAINT

SHEA GOULD CLEMENKO & KRAMER
330 MADISON AVENUE
NEW YORK, N. Y. 10017
MO 1-3200

ATTORNEYS FOR Plaintiff

Transcript of proceedings before Judge Charles E. Stewart dated September 14, 1973.

(631a - 653a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
OCT 25 1973
S. D. OF N. Y.

INTERNATIONAL CONTROLS CORPORATION,

Plaintiff,

-against-

73 Civ. 2514

ROBERT L. VESCO, et al.,

Defendants.

Before:

HON. CHARLES E. STEWART,

District Judge

New York, September 14, 1973
10:15 a.m.

APPEARANCES:

SHEA, GOULD, CLIMENKO & KRAMER, Esqs.,
Attorneys for Plaintiff,
Sheldon Camby, Esq.
Daniel L. Carroll, Esq.
Lois Yohem, Esq., of Counsel
-and-
David M. Bobowsky, Esq.,
Special Counsel to Plaintiff

CHRISTY, FREY & CHRISTY, Esqs.,
Attorneys for Andean Credit, S.A.
Arthur H. Christy, Esq., of Counsel

- - -

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MR. CAMEY: Your Honor, I am going to be brief.

The Morales deposition was at our request. This matter was on for trial a week ago. I have discussed this with my partners and associates, first what we expect to adduce from Mr. Morales and conditions of going to the Bahamas. For the reasons I said yesterday, we would prefer just to go straight into the hearing and not take Mr. Morales' deposition, go straight into the hearing within five to ten days so we can round up our witnesses. We will not go to the Bahamas to get Mr. Morales' testimony.

THE COURT: Is it a question of going to the Bahamas?

MR. CAMEY: Yes, sir, for the following reason --

THE COURT: If that is the problem, I see no reason why I shouldn't direct that the deposition of Mr. Morales be taken in Florida.

MR. CAMEY: Well, if your Honor were to direct Mr. Morales to appear in Florida, we will proceed with the deposition.

THE COURT: Which I have pretty well done.

My concern is this: You have come close to representing that you need Morales' testimony and if you don't get it because Mr. Christy doesn't produce him, you

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are going to ask me to hold that against him.

If you back away from Morales at this point, I don't know where I am.

MR. CAMHY: Let me put it this way --

THE COURT: Do you have other witnesses?

MR. CAMHY: I have other witnesses. I have enough about Morales from what Mr. Christy has already submitted.

My concern is very simple. I believe that this case ought to be held with Morales in this courtroom and Mr. Aberle in the courtroom. I do not wish to give Mr. Christy -- to be very honest, it's a question of strategy. I do not wish to give Mr. Christy the opportunity to depose Mr. Morales in the Bahamas and then read that in here. If Mr. Christy wants to use Mr. Morales' testimony or Mr. Aberle's testimony, I want it done under some conditions of credibility.

THE COURT: Mr. Camhy, if you take Mr. Morales' deposition, wherever you take it, that doesn't prejudice you in any way with respect to trying to produce Mr. Morales at the trial.

MR. CAMHY: I think not, your Honor. I suspect that what will happen is that we will go to the Bahamas and get a long story from these people with a lot of

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dead ends, and then we will be back here.

My prima facie case I am fairly clear on. I have my witnesses. If they are going to put in something, I want them here.

THE COURT: Why here? What difference does it make whether it's here or the Bahamas or Florida?

MR. CAMHY: I just feel that people will not travel a thousand miles to present a story which is natural.

THE COURT: All right.

MR. CAMHY: If they will come here, there is at least some fair possibility that the truth may be had here.

THE COURT: If they won't come here when they are required to, I can take that for whatever I want to take it.

Frankly, Mr. Camhy, I am puzzled.

MR. CAMHY: I feel, your Honor, I can make my case without Mr. Morales. I feel that a trip to the Bahamas would cause a considerable expense to ICC, subject us to possibilities of problems there with reprisals in light of the problems Miss Yohonn had when she --

THE COURT: That is not a good precedent, I think. Miss Yohonn is a young lad, who, as you know, is physically not a very large person and she got in and

it run then.

It seems to me that Mr. Morales' testimony here is pretty important and you need his deposition. You recognized its importance. Your backing away from this at this point troubles me.

MR. CAHILL: It is simply because I feel I can go to the Bahamas, Mr. Morales can tell me practically anything he wants to there. There is no way I can go behind it. I will not have accomplished a thing. Whereas if he comes to Miami, the chances are he will be honest and truthful. If he comes to the trial, there are better

out and did what she was supposed to do, apparently did it without any danger.

MR. CAMBY: Your Honor, we have given your law clerk some authority, some law, which says that where there is a 100 per cent owner of a corporation and where it appears to the Court that that person directs the corporation, you can take that person's deposition as if he was a party.

THE COURT: I have no doubt of that.

MR. CAMBY: In our view, your Honor, if it is necessary to go to the Bahamas to get Mr. Morales' story, we can put our case in without it. If Mr. Chrasty wants to take Mr. Morales' deposition --

THE COURT: That is a risk you are going to have

defrauded stockholders.

THE COURT: Can you give me some idea of what your other evidence is?

MR. CAMBY: Yes. We have Mr. Warham, who will testify that Columbus Trust --

THE COURT: You already have an affidavit which I think can't be -- maybe it can be contradicted. It hasn't been.

MR. CAMBY: Mr. Warham will appear at the hearing. We expect and we hope that he will also testify that he knew Morales and that Mosler and

chances that he will be honest and truthful.

I can prove what I have to prove --

THE COURT: What can you tell me which supports that proposition that he will be more truthful in Florida and ever more truthful here?

MR. CAHHY: It has less to do with Morales than with the other companies. There are three companies. There's BCB, Columbus Trust and Andean.

The real question here, your Honor, is: Was this vessel purchased by one of the defendants here or, secondly, was it purchased with funds which are the proceeds of a wrongdoing here? Either one of those would make this vessel the possible subject of a restraint, to protect

and that is Columbus Trust.

Mr. Morales is Vesco's designee on boards of directors. Columbus Trust was the party who gave the direction for the transfer of the British money here. BCB, the board on which Mr. Morales sits, was the active defendant in the liquidation of the Dollar Funds and --

THE COURT: My problem is I know all of this. You decided, and I think quite properly, that you wanted to take Morales' testimony. Mr. Christy has been not entirely cooperative, but he has been cooperative. Now you want to retreat from that.

Aberle sat on the boards of BCI and that Morales was a person who acted for Vesco in one or more occasions at Vesco's request in business matters.

THE COURT: As to that fact I don't think you need Warham's testimony. I don't suppose that that fact has been proved absolutely conclusively.

I am prepared to believe that that is the fact. Mr. Christy hasn't tried to dissuade me that it's not the fact. Vesco knows Morales.

MR. CAHILL: We have Morales now saying that he owns a vessel that's worth less than a million five, which was mortgaged on its purchase for a million five to a person who was an active participant in the wrongdoing here.

I appreciate his problem. I don't want to [illegible]

into Florida and expose him to unnecessary litigation.

On the other hand, I think we have gotten to the point here where it's got to be done.

I don't see why, Mr. Christy, I can't protect Mr. Morales. I want to protect him.

I would think that Judge Mehrtens in Florida would help me on this.

MR. CHRISTY: Your Honor, I am a little amazed at the argument of Mr. Canby, that he thinks Mr. Morales is apt to be more truthful in Florida than the Bahamas.

THE COURT: That surprises me, too.

Mr. Christy has been acting on the assumption that Morales' testimony would be taken and he has cooperated to the extent that he has cooperated on that basis.

I also have understood that Morales' testimony would be taken and I want his testimony to be taken.

MR. CANDY: Your Honor, that's a direction as far as I am concerned.

THE COURT: Look, I don't think there's any magic about the Bahamas. I was just trying to suit the convenience of people.

I gather from what Mr. Christy said yesterday, that he will reluctantly produce Mr. Morales in Florida.

which gets us into legal technicalities, but may be the way out.

I have submitted a case in law to the effect that if Mr. Morales is the corporation, then he can be compelled to be produced in the United States. I will stand on that.

There is no evidence here on this record except that Morales owns 100 per cent of the stock. Even the names that Mr. Christy read in yesterday are not really in the record, and there's no evidence that they are active people.

THE COURT: I don't know whether that case is the same I have. I had a similar situation. It's not entirely

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the Bahamas to Florida to get a federal judge

MR. CHRISTY: As I recall your Honor's remarks, it was to the effect that if Mr. Morales proved, and I think you used the word obdurate during the course of the depositions, that we could then move to Florida, and I didn't take issue with the Court's ruling on that point.

THE COURT: That really left it a little vague because he could say he was obdurate and you could say he wasn't.

MR. CHRISTY: All right. That is an issue that we will face when we come to it.

MR. CAMEY: May I make a suggestion, your Honor,

MR. CAMHY: No, I question not in any prejudicial way, but I am asking the question: Are these real directors who really run the company or are they nominal --

THE COURT: I don't think, Mr. Camhy, that that is an appropriate question at this point. It may become an appropriate question.

MR. CAMHY: It is has to do with whether Morales is the company or not.

MR. CHRISTY: You can ask him that in the Bahamas.

THE COURT: Mr. Christy has volunteered to produce -- not volunteered, but he is producing Morales. He said he will produce Mr. Morales. He also says he will

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clear but I am clear that if you have a 100 per cent stockholder in a situation like this, that I can require Mr. Morales to appear and I can infer whatever I want to if he doesn't.

MR. CANNY: All right.

My point, your Honor, is this: Mr. Christy has merely read in three or four names which were not in the record at the time your Honor made the original order, are not officially in the record except through Mr. Christy's representation of them.

THE COURT: Do you challenge his representation?

examination of Mr. Morales take place in Miami under the same timetable that we have already set up.

Whether Mr. Christy wishes to produce Mr. Aberle under these circumstances will be up to him. He volunteered to produce Mr. Aberle in the Bahamas; is that right?

MR.CHRISTY: Yes, your Honor.

THE COURT: Whatever he wants to do in Florida is up to him.

MR. CHRISTY: May I be heard, your Honor?

THE COURT: Yes.

MR. CHRISTY: Your Honor, I respectfully submit that the order yesterday was a perfectly good one under

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this:

First, Miss Yohonn's problem; second, the fact --

THE COURT: Miss Yohonn got in and out.

MR. CAMHY: Our own attorneys in the Bahamas have not been able to accomplish even the most routine tasks. I feel that the atmosphere in the Bahamas is such that we wouldn't be able to even begin to have some sense of compulsion on the part of the witnesses.

THE COURT: My ruling yesterday was I think such that if you found the atmosphere wasn't favorable, you could move. However, Mr. Camhy, I am going to direct that the

Honor I don't believe can control a party

THE COURT: I can't guarantee it, of course. What I can do is this: I can rule that if Mr. Morales comes to the United States pursuant to my direction and is served with any process, that it will be my ruling that that process is defective. I don't know what another Judge is going to do with that.

MR. CHRISTY: I know. Suppose a hypothetical: Suppose somebody who claims that Morales owes them money goes down and gets a summons and complaint served on him while he is in Florida, we are now before the Florida courts. I don't believe that your Honor can guarantee him freedom

SOUTHERN DISTRICT COURT REPORTERS
(UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPH. NO. (212) 791-1020)

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the circumstances.

Mr. Morales has advised me that he does not wish to come to the United States because of the fear of process and subpoenas and complaints. I am unable, your Honor, to give him an opinion that if he should come to the United States he will be guaranteed that no process will be served on him.

I don't believe that this court has the power to guarantee that to a witness coming to the United States. Yes, I think your Honor can control the parties who are litigating in however many matters there are before you which involve Mr. Vesco by a direction on them, but your

next guy and finally you find a person

all about.

MR. CAHHY: Well, I am prepared if Mr. Christy is to examine the officers and directors of this company in the Southern District on the questions in this case. Andean is supposed to be the owner. Let us start with Andean and ask Andean whatever questions are pertinent to the case.

THE COURT: Andean?

MR. CAHHY: Andean, yes, not Morales. Whoever the officers are who he wants to produce, let him produce them here. We will see where that takes us, your Honor. It seems to me it may be a slower way --

THE COURT: In light of the representations that

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THE COURT: Mr. Gemhy, isn't what you are saying the equivalent of this: You predict that when you take Morales' testimony you are not going to get anything? It seems to me that if you don't get anything, the order which I have issued is still outstanding and you are entitled to try somebody else. You are entitled to get from this company, Andean, testimony from a knowledgeable person.

It frequently happens, as you know, in discovery that you try the wrong guy first and then you go to the

is he a Panamanian?

MR.CHRISTY: Yes, your Honor.

THE COURT: Why should I assume he is going to be more truthful in Florida than he is going to be in the Bahamas?

MR. CAMHY: Your Honor, it has to do with the American --

THE COURT: It seems to me I might possibly assume he is going to be more truthful in Panama.

MR. CAMHY: Your Honor, it has to do with the fact that in this hemisphere, the United States laws are enforced, in the United States, I mean, and people in the United States take law of perjury seriously.

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you have made to me, Mr. Gamby, you were to start with Morales.

MR. GAMBY: Morales is Andean, but I am most reluctant to go to the Bahamas to see Mr. Morales. I am most concerned that he will be more truthful in Miami or New York than he would be in the Bahamas. When a man sits in the United States District Court House and gives testimony, he is concerned with the consequences of what he does. When he is in --

THE COURT: I don't know why I should assume that Mr. Morales, who is not, I take it, an American citizen --

THE COURT: But, on the other hand Mr. Cammy, Mr. Morales is going to appreciate I think that the reason why he is testifying wherever it is is because of United States laws and because of a United States Judge who is requiring that he testify, and the location, it escapes me. It especially escapes me since I have directed that if you feel, although this hasn't been spelled out, but I think the intent is pretty clear, that he isn't being the kind of a witness that we expect a witness to be, that is, he isn't being truthful, he's being obdurate, you can move the thing to Florida.

Mr. Cammy, I think I spoke too quickly when I said I will direct that it be taken in Florida.

One of the things I had in mind, quite frankly, when I said take it in the Bahamas and move to Florida if you need to was that I was going to put it to Mr. Morales. If he wants to run whatever risks are involved in going to Florida, okay. If he refuses to go to Florida, okay. I can see he's got a problem.

MR. CAMMY: Your Honor, is this a problem with which we ought to be concerned?

THE COURT: I think so.

MR. CAMMY: Is it? Is it this Court's obligation to protect a man from his own obligations in this country?

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THE COURT: I think so. I don't see that we need to unnecessarily expose a man to possible liability which has nothing to do with this lawsuit.

MR. CAMHY: If the only exposure is that people who seek him will be able to find him should that stand in the way of this court's compelling honest or the kind of testimony in its own court house when the man is only 50 miles away?

THE COURT: All right. When you put it that way, Mr. Camhy, I agree it should not. That is why I said if you can't do it in the Bahamas, move to Florida. Then Mr. Morales has to make a decision.

MR. CHRISTY: It seems to me that is eminently fair, your Honor.

THE COURT: What you can see I am coming to, Mr. Camhy, I am going to change my mind. I am not going to direct, at least the way I feel at this moment, that he be examined in Florida. I am going to stick with my ruling of yesterday.

I urge you, Mr. Camhy, to think it through once again. It seems to me, frankly, that your concern, which I recognize is legitimate, and as a good lawyer you ought to have these concerns, but I really think you are exaggerating the problem.

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MR. CAHILL: There is one aspect of it --

THE COURT: Look, I keep coming back to this.

First of all, the notion that there is going to be any problem as to your safety and so forth in the Bahamas, I just can't buy that. Miss Yohonn walked up to the front door I guess twice and walked away. I don't see any reason to feel that there is any problem there.

Secondly, my experience tells me thatyou can get a consul official to appear. So you have the United States sitting there.

Thirdly, and this is the most important thing, if you are dissatisfied with the way the thing is going in the Bahamas, and your dissatisfaction is not just completely unreal, my order contemplates that you will immediately go to Florida.

If Mr. Morales refuses, he's got to take the consequences.

MR. CAHILL: I gather your Honor feels that the deposition of Mr. Morales and Mr. Aberle will aid you in reaching a determination here, wholly apart for my needs, for my purposes of prosecuting the case?

THE COURT: You mean for other reasons?

MR. CAHILL: No, I mean in this matter.

THE COURT: Yes, I reached that conclusion because

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you told me that you wanted to do it.

MR. CAHHY: Yes. You know, your Honor, my object is to try to succeed for my client. I feel that I had enough, just enough perhaps, but nevertheless enough without Mr. Morales' testimony.

THE COURT: All you have so far are affidavits. You know the Frank case as well as I do.

MR. CHRISTY: Excuse me, your Honor. What case?

THE COURT: The Frank case.

MR. CAHHY: I felt that if we went to --

THE COURT: The Frank case, Mr. Christy, if you don't know it, it's a Second Circuit case which suggests that if the affidavits raise a question of fact which is substantial in connection with a motion for a preliminary injunction, that you have to have a hearing.

MR. CAHHY: My concern was that we would go to the Bahamas, get testimony which was seemingly cooperative, but not necessarily truthful, and then not have these parties here in New York at the trial because they would be able to use their own depositions.

THE COURT: I don't see that. They can't use their own depositions to avoid coming to the trial.

MR. CAHHY: I think they can, your Honor. They are permitted to read in these depositions as evidence.

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First, as admissions from the adverse party material that appears in Mr. Christy's own papers.

Secondly, witnesses. I don't mind now telling you a few of them: Mr. Bliven, Mr. Rhoades and Mr. Warham on the subject first of the vessel and the negotiations which preceded the sale, and Mr. Warham on the identity of Mr. Morales --

THE COURT: I predict you will not have Morales.

MR. CAMHY: I think Morales has, in effect, said all we need him to say in his affidavit, which is very short.

THE COURT: You have to bear in mind, Mr. Camhy, that if we go ahead with this program, which I take it we are now deciding upon, I suppose Mr. Christy is going to argue to me that you had the opportunity to talk to Mr. Morales under oath and you turned him down.

MR. CAMHY: And he has the opportunity to produce Mr. Morales in court and he may turn it down.

THE COURT: All right.

MR. CHRISTY: Can we recap to see where we stand?

THE COURT: Yes.

MR. CAMHY: We are prepared to go to a hearing after a week's notice, as soon as we can round up our people.

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THE COURT: That doesn't exclude you from asking them to testify and requiring that they testify. All that the deposition means is that if you are willing to accept it, you can, but if you want their live testimony at the trial, you can compel it.

MR. CAMHY: They will be more than 50 miles from the court house, your Honor. Their deposition will be available. I will have to sit there while this deposition is being read. It seems to me this is my problem.

THE COURT: In this matter I regard Mr. Morales and Andean as a party. If he doesn't want to come here and testify, I can infer whatever I want to infer from that.

MR. CAMHY: The question is, I suggest to your Honor --

THE COURT: It seems to me that if Mr. Morales lies at his deposition, that is going to become apparent. Maybe it won't.

MR. CAMHY: My own desire is not to perpetuate Aberle's and Morales' testimony in a place other than at the trial.

THE COURT: This is your problem, Mr. Camhy. I earnestly suggest to you, Mr. Camhy, that taking his deposition is not going to perpetuate anything.

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He is still and the other people in Aruban are still in my mind people that should testify at the trial.

Of course, the deposition can be used if you want to use it. That doesn't exclude you from calling them as witnesses. If they refuse to appear, they refuse to appear.

MR. CHRISTY: Are you now talking about the trial of your plenary action?

MR. CAMHY: No, the hearing on this vessel.

THE COURT: What trial?

MR. CAMHY: The hearing that we would have had last week but which your Honor adjourned to the 24th.

Excuse me, your Honor.

(Pause.)

MR. CAMHY: Your Honor, our feeling is that we would prefer to proceed directly to hearing and then let's see if Mr. Morales comes to the hearing. We will put in what we believe to be a showing of at least sufficient evidence to require rebuttal. I will only go one step further.

Your Honor in the last analysis is the best judge of what you think will bring out honest justice and honest facts.

If you feel that a treatment of this problem

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consistent with your own responsibilities requires preliminary work with Mr. Morales and Mr. Aberle in the Bahamas, I am prepared to do it.

THE COURT: Mr. Camhy, I don't have any feeling about that at all. This is your baby, not mine.

MR. CAMHY: If it's our baby, it's our preference to go directly into hearing.

THE COURT: When do youwant to do that?

MR. CAMHY: About a week to ten days.

THE COURT: I don't know what Mr. Christy's reaction is going to be. That is fine with me. I will be glad to hold a hearing.

MR. CHRISTY: It seems to me, your Honor, that this matter, the hearing -- let's use that term instead of the trial, that the Court can reach a resolution on the hearing based on affidavits or based on a deposition. I don't remember the Frank case precisely. I am familiar with the principle that if there is an issue of fact raised by controverting affidavits, yes --

THE COURT: If the parties are willing to submit it to me on the basis of the affidavits, there is no Frank case problem.

MR. CAMHY: Your Honor, we will appear at the hearing. We will have the following types of evidence.

Request for entry of default dated October 1, 1973 against Robert L. Vesco.

(654a - 657a)

Request for Default 655a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et. al.,

Defendants.

Civ. Action No.

73 Civ. 2518 (CES)

REQUEST FOR ENTRY OF DEFAULT

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
OCT 2 37 PM '73

TO:

Raymond F. Burghardt Clerk of the United States District Court for the Southern District of New York:

Upon the annexed affidavit of Sheldon D. Camhy, sworn to the 1st day of October, 1973, you will please enter the default of Robert L. Vesco, a defendant in the above entitled action, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

Dated: New York, New York
October 1 , 1973.

Yours, etc.,

SHEA GOULD CLIMENKO & KRAMER

By: _____
A Member of the Firm
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017
Tel.: (212) 661-3200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff,	Civ. Action No. 73 Civ. 2518 (CES)
-against-	
ROBERT L. VESCO, et. al., Defendants.	AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SHELDON D. CAMHY, being duly sworn, deposes and says:

1. I am a member of the firm of Shea Gould Climenko & Kramer, attorneys for the plaintiff in the above entitled action.

2. This action was commenced on the 7th day of June, 1973 by filing of the complaint and issuance of a summons. As appears from the Affidavit of Lois Sylor Yohonn, sworn to August 6, 1973 and filed with this court on August 6, 1973, the summons and complaint were served on the defendant Robert L. Vesco on June 30, 1973. A copy of that affidavit is annexed hereto as Exhibit "A". By order of the court dated July 27, 1973, a copy of which is annexed hereto as Exhibit "B", Lois Sylor Yohonn was authorized to effect service of process in the within action on defendant Robert L. Vesco.

Request for Default

657a

3. Defendant Robert L. Vesco has not answered, appeared or otherwise moved with respect to the complaint, but time to do so was extended to August 27, 1973, but no further extension have been requested or granted. Therefore, defendant Robert L. Vesco's time to answer or otherwise move with respect to the complaint has expired and said defendant is now in default.

4. Defendant Robert L. Vesco has gained much notoriety by reason of his financial dealings, many of which are the subject of the complaint herein. It is clear that said defendant is not an infant, an incompetent person or in the military service of the United States.

WHEREFORE, it is prayed that the Clerk of this Court note and enter the default of defendant Robert L. Vesco.

Sheldon D. Camby

Sworn to before me this
1st day of October, 1973.

Alice Manos

ALICE MANOS
Notary Public, State of New York
No. 24-4762540
Qualified in Bronx County
Commission Expires March 30, 1974

Judgment against Robert L. Vesco, filed October 5, 1973.

(658a - 661a)

U. S. DISTRICT COURT
FILED
OCT 5 1973
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et. al.,

Defendants.

Civ. Action No.
73 Civ. 2518 (CES)

JUDGMENT

This action having been commenced by the filing of a complaint and the issuance of a summons on the 7th day of June, 1973, and this court by order dated July 27, 1973, having authorized Lois Sylor Yohonn to effect service of process he on defendant Robert L. Vesco, and a copy of the said summons and complaint having been duly served on defendant Robert L. Vesco by Lois Sylor Yohonn on the 30th day of July, 1973, and proof of such service having been filed in the office of the Clerk of this Court on the 6th day of August, 1973; and

Defendant, ROBERT L. VESCO, having failed to plead, appear, move or otherwise defend with respect to the complaint herein, and the time for said defendant to appear, answer or otherwise move having expired, and said defendant's default having been noted and entered;

AND, it appearing to the court that there is no just reason for delay in entering the within judgment against defendant Robert L. Vesco;

NOW, on motion of Shea Gould Climenko & Kramer attorneys for the plaintiff, and, upon the affidavit of Sheldon D. Camhy, sworn to the 2nd day of October, 1973 that defendant Robert L. Vesco is not an infant or incompetent person and is not in the military service of the United States; it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendant Robert L. Vesco as demanded in the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be, and he hereby is, permanently enjoined from using the assets of plaintiff or its subsidiaries or the proceeds thereof for his own purpose to the loss and detriment of International Controls Corp. and its shareholders; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco account to plaintiff for all profits or gains received by him or those acting in concert with or aiding and abetting him in the transactions set forth in the complaint herein or in transaction thereafter entered into by him with funds or property wrongfully held by him by reason of the wrongful acts set forth in the complaint and all injury sustained by plaintiff by reason of the acts alleged in the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that Robert L. Vesco be and he hereby is required to indemnify plaintiff for all liability to others which it has or may incur by reason of the acts alleged in the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be and he hereby is, liable to plaintiff for all loss, damage, cost and expense arising from the acts alleged in the complaint herein and that the amount of said loss, damage, cost and expense be determined by the Court upon a hearing; and it is further

ORDERED, ADJUDGED AND DECREED that the aforesaid hearing as to plaintiff's loss, damage cost and expense be set down and held on a day designated by plaintiff, upon the plaintiff giving defendant Robert L. Vesco ten days notice of said hearing by registered or certified mail at Brace Ridge Road, Nassau, The Bahamas and 170 Denville Road, Boonton Township, New Jersey 07005; and it is further

ORDERED, ADJUDGED AND DECREED that upon the holding of the aforesaid hearing as to plaintiff's damages and the determination of said damages, the within judgment be amended granting plaintiff judgment against defendant Robert L. Vesco for the amount of such loss, damage, cost and expense together with interest and costs and disbursements of this action and that such amended judgment be entered against defendant Robert L. Vesco; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to apply at the foot of said judgment for such other and further relieve as to the Court may seem just and proper in the circumstances.

Charles E. Stewart, Jr.
U.S.D.J.

Affidavit of Joseph A. Bondi, Esq., dated November 12, 1973.

(662a - 673a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al., Defendants.	:	Civ. Action No. 73 Civ. 2518 (CES) AFFIDAVIT

JOSEPH A. BONDI, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Shea Gould Climenko & Kramer, 330 Madison Avenue, New York, New York 10017, general counsel for International Controls Corp., plaintiff herein.

2. By order dated October 19, 1973, David Butowsky, Special Counsel to International Controls Corp., and I were authorized to effect service of process herein upon defendants Robert L. Vesco, Norman LeBlanc, Stanley Graze, Richard E. Clay, Wilbert J. Snipes, Frederic E. Weymar, Gilbert R. J. Straub, C. Henry Buhl III, Ralph P. Dodd, Shirley Bailey, I.O.S., Ltd., Columbus Trust Company, Limited, Bahamas Commonwealth Bank ("BCB") International Bancorp, Kilmorey Investments, Ltd., Value Capital, Ltd., Global Holdings Ltd., Global Financial Ltd., Butlers Bank Ltd. (now known as Who Holdings Ltd.) and Allan J. Butler.

3. On Monday, October 22, 1973, David Butowsky and I proceeded to Nassau, Bahamas. On Tuesday, October 23, 1973

at approximately 9:30 A.M., Mr. Butowsky and I went to the premises in Nassau, Bahamas known as "Charlotte House" in which defendant BCB is located and we ascertained by examining a listing inside the bank premises that BCB was the registered agent for defendants Global Financial Ltd., Global Holdings Ltd. and Kilmorey Investments Ltd. Thereupon, we approached a receptionist situated at a desk on the main banking floor near a stairway providing access to offices on tne second floor, including those of certain of the other corporate defendants herein. The receptionist identified herself as Norma Russell. We asked Miss Russell whether Norman LeBlanc, President of BCB, was available for us to deliver some papers. Miss Russell, in our presence, checked by telephone with Mr. LeBlanc's office and told us that she had been authorized to accept papers on Mr. LeBlanc's behalf. We thereupon identified ourselves to Miss Russell and left with her three copies of the Summons and Amended Complaint herein, which were in envelopes marked Global Financial Ltd., Global Holdings Ltd. and Kilmorey Investments Ltd. Miss Russell provided us with a written receipt for the Summons and Amended Complaint herein.

4. Immediately thereafter, a woman who identified herself as Miss Hastie, Norman LeBlanc's secretary, appeared, accompanied by a man who identified himself as a security officer of BCB. I recognized Miss Hastie as being one of Mr. LeBlanc's secretaries from a prior visit to Mr. LeBlanc. Miss Hastie asked us what we wanted and we advised her that we wished to serve defendants in the action herein with a Summons and Amended Complaint. She stated that she could not accept the Summons and Amended Complaint and we stated that Miss Russel

had accepted them.

5. Mr. Butowsky and I thereupon left the BCB by its main entrance and proceeded to a side entrance which we knew from a prior visit led to defendant LeBlanc's office. We proceeded to the wooden door to Mr. LeBlanc's private offices, which was locked, and I affixed to the door a copy of the Summons and Amended Complaint. As I was doing this, Miss Hastie, two uniformed guards and the security officer we met previously ran towards us yelling that we should leave at once. We immediately left and Miss Hastie ripped the Summons and Amended Complaint from the door and threw it at us.

6. Thereafter, at about 10:15 A.M., Mr. Butowsky and I drove to the Sonesta Beach Hotel in Nassau, Bahamas, to seek to attend a shareholders meeting of Investment Properties International, Ltd. ("IPI"), which was scheduled for 10:00 A.M. that morning. Defendants Norman LeBlanc and Gilbert R. J. Straub were listed in the notice of meeting as being shareholders proposed to be selected as members of a committee of inspectors with the power of appointing a liquidator of IPI and we believed that we might possibly be able to serve them personally at the meeting. Upon arriving at the hotel we inquired where the meeting was being held and were advised that the meeting had been adjourned as no quorum had been present and that Messrs. Straub and LeBlanc were also not present.

7. Thereafter, at about 11:30 A.M., Mr. Butowsky and I proceeded to Beaumont House, located in Nassau, Bahamas, in which the offices of defendant Columbus Trust Company, Ltd. are located. We proceeded to the offices of Columbus Trust

Company Ltd. ..d asked to see Mr. Frederick Murray, the Secretary of Columbus Trust Company Ltd. We introduced ourselves to Mr. Murray, advised him why we were in Nassau and I served him with a copy of the Summons and Amended Complaint herein.

8. Thereafter, at about 12:15 P.M., Mr. Butowsky and I went to a premises located on Charlotte Street, Nassau, Bahamas, in which we had been advised defendant Allan J. Butler had his offices. We asked a person present in the office if Mr. Butler was there and a lady who identified herself as Miss Knowles and stated that she was Mr. Butler's secretary advised us that Mr. Butler was in the United States. We asked Miss Knowles if the office was also the office of Butlers Bank Ltd. (now known as Who Holdings, Ltd.) and she stated that it was. After identifying ourselves, we advised Miss Knowles that we were serving Butlers Bank, Ltd. (now known as Who Holdings Ltd.) with a Summons and Amended Complaint herein. She accepted such Summons and Amended Complaint.

9. At about 2:30 P.M. on October 23, 1973, Mr. Butowsky and I went to the residence of Allan J.Butler in Nassau, Bahamas, known as Jacaranda. We rang the doorbell and were greeted by a maid who advised us that it was Mr. Butler's residence but that he was out of the country. We then informed the maid that we wished to serve a Summons and Amended Complaint in the action herein on Allan J. Butler and would leave it with her. She promised us that she would give the Summons and Amended Complaint herein to Mr. Butler upon his return. The road from Mr. Butler's office required that

we pass the premises occupied by BCB and observed that uniformed security guards were patrolling the sidewalk in front of the bank and the entrance to Mr. LeBlanc's office.

10. Thereafter, on October 23, 1973, Mr. Butowsky and I made inquiries from persons as to the possible whereabouts of the individual defendants herein and then sought to locate such persons at various restaurants and other establishments known to be frequented by them.

11. On October 24, 1973, Mr. Butowsky and I engaged the services of a resident of Nassau, Bahamas who was familiar with the roads on New Providence island and who, we believed, would be helpful in locating the residences of various of the defendants herein. At about 1:30 P.M. on October 24, Mr. Butowsky, the local guide and I drove to the offices of BCB, and I entered the main entrance of the bank with copies of the Summons and Amended Complaint herein, which were marked with the names of Bahamas Commonwealth Bank, International Bancorp, Kilmorey Investments, Ltd., I.O.S., Ltd., Value Capital Ltd., Global Holdings Ltd. and Global Financial Ltd. As there had been guards patrolling the bank premises and the sidewalk outside the bank building following our visit on the previous day, and as other guards had chased us while we were serving process herein on the previous day, we deemed it imprudent to wait in the bank and make extended inquiries as to the presence of officers. I deposited the copies of the Summons and Amended Complaint herein with the receptionist in the bank and advised her that these were papers in the action herein being served on BCB and on various corporations for which BCB was registered agent. We then left the premises.

12. Thereafter, Mr. Butowsky, the local guide and I proceeded to the residence located on Brace Ridge Road, Nassau, Bahamas, which we had been advised was the last known residence of, and owned by, defendant Gilbert R. J. Straub and was also the last known residence in Bahamas of defendant Robert L. Vesco and an occasional residence of defendant Norman LeBlanc. This was the same residence at which Mr. Vesco had been personally served with a subpoena by an Assistant United States Attorney and at which plaintiff herein had served Mr. Vesco with the original Summons and Complaint. Upon arriving at such premises, we proceeded to the gate. Two men who identified themselves as gardeners were standing at the gate and asked us what we wanted. We identified ourselves and stated that we wished to serve the Summons and Amended Complaint herein on Messrs. Vesco, LeBlanc and Straub.

13. One of the gardeners proceeded into the house to call BCB and the other gardener remained inside the gate watching us. After approximately ten minutes a car approached, occupied by the same man who had identified himself as a security officer of BCB on the previous day and a man named Charles Evans, who, from our previous visit to Nassau, Bahamas we believed to be employed as a chauffeur by either defendant LeBlanc or for defendant LeBlanc by defendant BCB. These gentlemen asked what we wanted and we identified ourselves and stated that we wished to serve the Summons and Amended Complaint herein on Messrs. Straub, Vesco and LeBlanc. The men said that they could not accept the papers and the man who had previously identified himself as a security officer for Bahamas Commonwealth

removed a miniature camera from his shirt pocket and proceeded to take photographs of both Mr. Butowksy and me.

14. I thereupon sought to hand copies of the Summons and Amended Complaint herein to the gardeners and they jumped back. I then tossed copies of the Summons and Amended Complaint herein over the gate and onto the driveway inside the premises. One of the gardeners picked them up and handed them to the security officer who threw them into our car. We then drove away.

15. Mr. Butowsky, the local guide and I then drove to the Sonesta Beach Hotel, which we had been informed was one of the customary residences of Mr. LeBlanc in Nassau, Bahamas. I went to the front desk of the Sonesta Beach Hotel, asked for Mr. LeBlanc and was advised that he was not present. I stated that I wished to leave a Summons and Amended Complaint herein for him and was told that I could leave it with the desk clerk, who assured me that he would see that it was promptly given to Mr. LeBlanc.

16. Mr. Butowsky, our local guide and I then proceeded to Knob Hill Apartments, located off East Bay Street, Nassau, Bahamas. We had been advised that Knob Hill Apartments was a known residence of Norman LeBlanc in Nassau, Bahamas. We inquired of one of the residents in the apartment complex where Mr. LeBlanc's apartment was and were advised that Mr. LeBlanc had been known to reside in an apartment on the first floor. We then proceeded to such apartment, and knocked on the door. We received no answer. I there-

upon taped a co ' of the Summons and Amendc Complaint herein on the doorway of such premises.

17. Mr. Butowsky, our local guide and I then proceeded to a premises in Nassau, Bahamas, located opposite the residence of a Dr. Applewood, which premises, we had been advised, was presently the residence of Miss Wendy Kenyon, and also one of the customary residences of Mr. LeBlanc in Nassau, Bahamas. We rang the doorbell and knocked on the door of such premises and did not receive an answer. We thereupon returned to our hotel.

18. At 8:00 o'clock on the evening of October 24, Mr. Butowsky and I drove to the premises of Miss Wendy Kenyon. We approached the doorway and rang the bell. A person inside with a female voice asked who we were and we identified ourselves as David Butowsky and Joseph Bondi. The person inside refused to open the door and I thereupon taped a copy of the Summons and Amended Complaint herein to the outside of the door.

19. We then proceeded to the Cafe Martinique on Paradise Island, Bahamas, known by us to be a restaurant frequented by various of the defendants herein. We asked a waiter if he had seen Messrs. LeBlanc, Straub, Clay or Vesco that evening and he said he had not but believed that several of them had been present the previous evening. He then searched the restaurant for such persons and advised us that none were present.

20. At approximately 7:00 A.M. on the morning of October 25, 1973,I received a telephone call from a man who identified himself as (and whose voice I recognized as) Norman LeBlanc. Mr. LeBlanc advised me that he was calling from Costa Rica and that our conversation was being tape recorded. He asked that I cease harrassing his secretary by leaving copies of the Summons and Amended Complaint herein taped on the doorway of her residence. I replied that we were not seeking to harrass him or any other persons, but that we were seeking to effect service in the action herein. He then stated that I should govern my actions in accordance with Bahamian law and that such service was not effective under Bahamian law. I advised him that we believed our service to be effective under the laws of the United States of America and that we were seeking to serve him in an action pending in courts of the United States of America. Mr. LeBlanc suggested that I retain Bahamian counsel and repeated that I should cease harrassing him and his secretary.

21. After breakfast on the morning of October 25, 1973, I asked the switchboard operator if I had any messages and she advised me that a man had sought to telephone me at ten minute intervals between 9:30 and 11:[illegible] P.M. on the evening of October 24. I believe that this was Mr. LeBlanc.

22. On the morning of October 25, 1973, Mr. Butowsky and I went to the general post office in Nassau, Bahamas and obtained the Post Office box numbers from the inquiry clerk therein of defendants Robert L. Vesco, Gilbert R.J. Straub,

Bahamas Commonwealth Bank, Allan J. Butler, Butlers Bank, and of Miss Wendy Kenyon. [There is no street mail delivery service in the Bahamas]. I thereupon purchased stamps and deposited copies of the Summons and Amended Complaint herein in envelopes addressed to the Post Office boxes of Bahamas Commonwealth Bank; International Bancorp, Kilmorey Investment Ltd., Value Capital Ltd., Global Holdings Ltd., Global Financial Ltd., and I.O.S., Ltd., all c/o Bahamas Commonwealth Bank; Robert L. Vesco, Gilbert R. J. Straub, Allan J. Butler, Butlers Bank Ltd. (now known as Who Holdings Ltd.) and Norman LeBlanc c/o Miss Wendy Kenyon. I then deposited all such envelopes, with the proper postage affixed, into the mail receptacle located in the post office.

23. Thereafter, I went to my hotel to pack and proceed to the airport. I noticed that the man who had identified himself as a security guard of BCB and whom I had met previously at the residence at Brace Ridge Road was sitting outside my hotel. I thereupon checked out of the hotel, intending to proceed by my rented automobile to the airport. Before leaving Paradise Island I noticed that the security officer was following me in an automobile. I sought to verify that he was following me by first driving quickly, then slowing down, then halting and then turning on a side road. He continued to follow me and I determined that it would not be prudent to drive to the airport. I thereupon returned the automobile at the Avis depot in Nassau and proceeded by taxi to the aitport. I did not notice the security guard following the taxi until I reached the main entrance at the airport. At that time, I again noticed

the security guard and upon leaving the taxi at the airport immediately approached a policeman. I pointed out the security guard to the policeman and stated that he had been following me. The policeman stated that he knew the security guard to be a former Nassau policeman and asked me who I was. I identified myself and stated that I had been authorized by a United States court to serve process on various defendants including Robert L. Vesco and Norman LeBlanc and that I believed the security guard to be in their employ. The policeman acknowledged that he so understood this to be the case and said that he would see to it that I would board my airplane without interference. I boarded the airplane and left Nassau, Bahamas without further incident.

Joseph A. Bondi
JOSEPH A. BONDI

Sworn to before me this
twelfth day of November, 1973

Elsie L. Selig

ELSIE L. SELIG
Notary Public, State of New York
No. 21-[illegible]7750
Qualified in New York County
Commission Expires March 30, 1975

Answer to amended complaint by Vesco & Co., Inc. dated February 11, 1974.

(674a - 680a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

v.

ROBERT L. VESCO, et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

ANSWER TO AMENDED COMPLAINT

Defendant, Vesco & Co., Inc., answering the Amended Complaint of plaintiff, International Controls Corp., says:

AS TO PLAINTIFF'S GENERAL ALLEGATIONS IN PARAGRAPHS 1-5 OF AMENDED COMPLAINT

1. Defendant, Vesco & Co., Inc., lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the Amended Complaint, except as to specifically deny that it has violated any provisions of the Securities Exchange Act of 1934 (15 U.S.C. §§78a et. seq.), or the rules and regulations adopted and promulgated thereunder, or that it has breached any other state law or common law duty to plaintiff.

2. Defendant, Vesco & Co., Inc., denies the allegations contained in paragraph 2 of the Amended Complaint that this Court has jurisdiction over it either by reason of §27 of the Securities Exchange Act of 1934 (15 U.S.C. §78aa), any principles of pendent jurisdiction, or otherwise, and reserves all rights in connection therewith.

3. Defendant, Vesco & Co., Inc., lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 3 of the Amended Complaint, except as to specifically deny that it has any contacts whatsoever with the Southern District of New York.

4. Defendant, Vesco & Co., Inc., admits the allegations of paragraph 4 of the Amended Complaint.

5. Defendant, Vesco & Co., Inc., lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in subparagraphs 5(a) through 5(p) and 5(r) through 5(gg) of the Amended Complaint. As to subparagraph 5(q), it admits that it is a Delaware corporation, and that it is presently the owner of approximately 846,380 shares of ICC common stock, but it denies the remaining allegations contained in subparagraph 5(q) of the Amended Complaint.

FIRST COUNT

6. Defendant, Vesco & Co., Inc., denies any of the allegations contained in paragraph 6 of the First Count of the Amended Complaint, which may be deemed to be asserted against this defendant, and lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of that paragraph.

7. Defendant, Vesco & Co., Inc., denies that it has ever engaged in or aided and abetted in any "Scheme", "fraudulent acts", or "practices" individually or in concert with any of the other named defendants in this action. Defendant, Vesco & Co., Inc., lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of

paragraph 7 of the First Count of the Amended Complaint.

8. Defendant, Vesco & Co., Inc., lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 8 through 21 of the First Count of the Amended Complaint, which paragraphs do not appear to contain any allegations relating to this defendant. Insofar as these paragraphs may be deemed to allege any wrongdoing or liability to plaintiff on the part of this defendant, however, such allegations are specifically denied.

SECOND COUNT

9. Defendant, Vesco & Co., Inc., lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 22 through 31 of the Second Count of the Amended Complaint, which paragraphs do not appear to contain any allegations relating to this defendant. Insofar as these paragraphs may be deemed to allege any wrongdoing or liability to plaintiff on the part of this defendant, however, such allegations are specifically denied.

THIRD-FOURTEENTH COUNTS

10. Defendant, Vesco & Co., Inc., lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 32 through 78 of the Third through Fourteenth Counts, inclusive, of the Amended Complaint, which paragraphs do not appear to contain any allegations relating to this defendant. Insofar as these paragraphs may be deemed to allege any wrongdoing or liability to plaintiff on the part of this defendant, however, such allegations are specifically denied.

FIRST AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over defendant, Vesco & Co., Inc., and defendant reserves all rights with respect thereto, including the right of further appellate review of this Court's determination adversely thereto.

SECOND AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over defendant, Vesco & Co., Inc., and defendant reserves all rights with respect thereto, including the right of further appellate review of this Court's determination adversely thereto.

THIRD AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over defendant, Vesco & Co., Inc., by reason of insufficiency of process and insufficiency of service of process, and defendant reserves all rights with respect thereto, including the right of further appellate review of this Court's determination adversely thereto.

FOURTH AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim against defendant, Vesco & Co., Inc., upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

Defendant, Vesco & Co., Inc., has breached no duty or obligation to ICC, nor does it have any liability whatsoever on any basis to plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Defendant, Vesco & Co., Inc., has not acted in concert with, or aided and abetted any of the parties to this action in performing any acts or wrongdoings which in any way have breached

a duty or obligation, or created any liability on the part of this defendant to ICC.

SEVENTH AFFIRMATIVE DEFENSE

Defendant, Vesco & Co., Inc., has not violated any provisions of the Securities Exchange Act of 1934, or the rules and regulations promulgated thereunder, nor has it breached any other state or common law duty to plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Defendant, Vesco & Co., Inc., if held to be liable to plaintiff in any respect, is entitled to contribution from such of the other defendants, if any, as may also be determined to be liable.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By /s/ Laurence B. Orloff
Laurence B. Orloff

Dated: February 11, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Index No. 73 Civ. 2518 (CES)

RECEIVED
1974 FEB 12 PM 3:12

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

v.

ROBERT L. VESCO, et al,

Defendants.

ANSWER TO AMENDED COMPLAINT

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant, Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102

BY _____

International Controls Corp.,
Plaintiff,
v.
Robert L. Vesco, et al,
Defendants.

Receipt of copy of pleading filed is hereby acknowledged
this _____ day of February, 1974.

Notice of partial inquest, dated April 26, 1974.

(681a - 687a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., : Index No. 73 Civ. 2518 (CES)

Plaintiff, :

-against- : NOTICE OF PARTIAL INQUEST

ROBERT L. VESCO, et. al., :

Defendants. :

----------x

S I R S :

PLEASE TAKE NOTICE that pursuant to Rule 55(b)(2) of the Federal Rules of the Civil Procedure a hearing will be held before the Hon. Charles E. Stewart, Jr., United States District Judge, in the United States Courthouse, Foley Square, New York, New York, on the 14th day of May, 1974 at 4:00 P.M. in Room 705 for the purpose of making a partial determination of plaintiff's loss, damage, costs and expenses for which defendant Robert L. Vesco has been found to be liable to plaintiff in the Judgment heretofore entered on October 5, 1973, a copy of which is annexed hereto as Exhibit "A".

Dated: New York, New York
April 26, 1974.

SHEA GOULD CLIMENKO & KRAMER

By: _____
A Member of the Firm
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017
Tel.: (212) 661-3200

TO: ROBERT L. VESCO
Brace Ridge Road
Nassau, Bahamas

and

170 Denville Road
Boonton Township, New Jersey 07005

(By Certified Mail)

Exhibit A

Notice of Partial Inquest

684a

DEFICIENCY

U.S. DISTRICT COURT
Filed
OCT 5 1973
S.D. of N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et. al.,

Defendants.

Civ. Action No.
73 Civ. 2518 (CES)

JUDGMENT

This action having been commenced by the filing of a complaint and the issuance of a summons on the 7th day of June, 1973, and this court by order dated July 27, 1973, having authorized Lois Sylor Yohonn to effect service of process herein on defendant Robert L. Vesco, and a copy of the said summons and complaint having been duly served on defendant Robert L. Vesco by Lois Sylor Yohonn on the 30th day of July, 1973, and proof of such service having been filed in the office of the Clerk of this Court on the 6th day of August, 1973; and

MICROFILM
OCT 9 1973

Defendant, ROBERT L. VESCO, having failed to plead, appear, move or otherwise defend with respect to the complaint herein, and the time for said defendant to appear, answer or otherwise move having expired, and said defendant's default having been noted and entered;

AND, it appearing to the court that there is no just reason for delay in entering the within judgment against defendant Robert L. Vesco;

NOW, on motion of Shea Gould Climenko & Kramer attorneys for the plaintiff, and, upon the affidavit of Sheldon D. Camhy, sworn to the 2nd day of October, 1973 that defendant Robert L. Vesco is not an infant or incompetent person and is not in the military service of the United States; it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendant Robert L. Vesco as demanded in the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be, and he hereby is, permanently enjoined from using the assets of plaintiff or its subsidiaries or the proceeds thereof for his own purpose to the loss and detriment of International Controls Corp. and its shareholders; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco account to plaintiff for all profits or gains received by him or those acting in concert with or aiding and abetting him in the transactions set forth in the complaint herein or in transaction thereafter entered into by him with funds or property wrongfully held by him by reason of the wrongful acts set forth in the complaint and all injury sustained by plaintiff by reason of the acts alleged in the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that Robert L. Vesco be and he hereby is required to indemnify plaintiff for all liability to others which it has or may incur by reason of the acts alleged in the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be and he hereby is, liable to plaintiff for all loss, damage, cost and expense arising from the acts alleged in the complaint herein and that the amount of said loss, damage, cost and expense be determined by the Court upon a hearing; and it is further

ORDERED, ADJUDGED AND DECREED that the aforesaid hearing as to plaintiff's loss, damage cost and expense be set down and held on a day designated by plaintiff, upon the plaintiff giving defendant Robert L. Vesco ten days notice of said hearing by registered or certified mail at Brace Ridge Road, Nassau, The Bahamas and 170 Denville Road, Boonton Township, New Jersey 07005; and it is further

ORDERED, ADJUDGED AND DECREED that upon the holding of the aforesaid hearing as to plaintiff's damages and the determination of said damages, the within judgment be amended granting plaintiff judgment against defendant Robert L. Vesco for the amount of such loss, damage, cost and expense together with interest and costs and disbursements of this action and that such amended judgment be entered against defendant Robert L. Vesco; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to apply at the foot of said judgment for such other and further relief as to the Court may seem just and proper in the circumstances.

JUDGMENT ENTERED OCT 5 1973
S/ RAYMOND F BURGHARDT
Clerk

S/ CHARLES F. STEWART JR
U.S.D.J.

Dated: New York, New York
October 5, 1973

INDEX NO. 73 Civ. 2518 (CES)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et. al.,

Defendants.

NOTICE OF PARTIAL INQUEST

SHEA GOULD CLIMENKO & KRAMER
330 MADISON AVENUE
NEW YORK, N. Y. 10017
MO 1-3200

ATTORNEYS FOR Plaintiff

RECEIVED MAY 10

Order to Show Cause for receiver to intervene, dated May 9, 1974, with affidavit of John K. Schemmer, Receiver.

(688a - 700a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, et al., :

Defendants. :

- x

73 Civ. 2518 (CES)

ORDER TO SHOW CAUSE

Upon the annexed affidavit of John K. Schemmer, the receiver appointed by this Court in Securities and Exchange Commission v. Robert L. Vesco, et al., (72 Civ. 5001 (CES)), sworn to May 9, 1974, and upon all the pleadings and proceedings heretofore herein; it is

ORDERED that any person receiving notice hereof as set forth below or in other fashion who desires to object to entry of the proposed order annexed hereto, appear and show cause to this Court before the Honorable Charles E. Stewart, Jr., United States District Judge, in Room 705, United States Courthouse, Foley Square, New York, New York on May 14th, 1974 at 4 P.M., or as soon thereafter as counsel may be heard, why the proposed order annexed hereto should not be made and entered forthwith; and it is further

ORDERED that personal service of a copy of this order to show cause and the annexed affidavit of John K. Schemmer (with exhibit) upon the attorneys for the parties

who have heretofore appeared herein at or before 5 P.M. on May 10, 1974 shall be due and sufficient service upon such parties.

Dated: New York, New York
May 9, 1974
2:58 P.M.

/s/ C.E. Stewart, Jr.
U. S. D. J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, et al., :

Defendants. :

- x

73 Civ. 2518 (CES)

ORDER

Upon the Order to Show Cause dated May , 1974, the affidavit of John K. Schemmer, the receiver appointed by this Court in Securities and Exchange Commission v. Robert L. Vesco, et al., (72 Civ. 5001 (CES)), sworn to May 9, 1974 and the form of intervenor complaint annexed thereto; and upon all the pleadings and proceedings heretofore herein, and pursuant to Rule 24 of the Federal Rules of Civil Procedure, it is

ORDERED that said receiver hereby is permitted to intervene in this action.

Dated: New York, New York
May , 1974

U. S. D. J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

INTERNATIONAL CONTROLS CORP., : 73 Civ. 2518 (CES)

Plaintiff, :

: AFFIDAVIT

-against-

ROBERT L. VESCO, et al., :

Defendants. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN K. SCHEMMER, being duly sworn, deposes and says:

1. I am the receiver appointed by this Court in Securities and Exchange Commission v. Robert L. Vesco, et al., (72 Civ. 5001 (CES)), having been so appointed by this Court's Final Judgment of Permanent Injunction and Appointment of Receiver dated September 28, 1973 (the "Final Judgment"). I submit this affidavit in support of my application for an order authorizing me to intervene in this action.

2. On October 5, 1973 this Court issued a preliminary injunction in this action restraining the removal of the yacht "Patricia III" from Florida.

3. My counsel's review of the record in this action has convinced me that there is a reasonable likelihood that the funds used for the purchase, chartering, repair and

refitting of the yacht "Patricia" were misappropriated in or about March 1973 by certain of the defendants in this action from an account of Properties Resources Limited ("PRL") at a bank in London, England. This conclusion is outlined with greater specificity in the form of intervenor complaint annexed hereto as Exhibit A.

4. Andean Credit S. A., an intervenor in this action, claims ownership of the yacht and has attempted to obtain its release.

5. I believe that the release or other disposition of the yacht -- and, in that connection, the further proceedings in this action -- may as a practical matter impair my ability to protect my interest in the yacht as receiver of the assets of PRL. I also believe that my interest is not represented by the existing parties in this action and that my claim involves questions of law and fact common to the allegations of plaintiff International Controls Corp. and intervenor Andean Credit S. A. with respect to the yacht. I further believe that my intervention will not unduly delay or prejudice the adjudication of the rights of the original parties to this action.

6. This motion is brought on by an order to show cause for the reason that the delay inherent in the use of notice of motion procedures may prejudice the successful enforcement of the Final Judgment.

7. No previous application for this or similar relief has been made by me to any other court or judge.

WHEREFORE, I respectfully request that my application herein be granted.

John K. Schemmer
John K. Schemmer

Sworn to before me this
9th day of May, 1974.

W. E. Ellis Hance
Notary Public

arial
Seal]

CHARLES ELLIS HANCE
Notary Public, State of New York
No. 31-1656200
Qualified in New York County
Commission Expires March 30, 1975

Order to Show Cause 695a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., INC. IOS LTD., COLUMBUS TRUST COMPANY, LIMITED, BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD. (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK - NEW YORK, Defendants, ANDEAN CREDIT S.A. and JOHN K. SCHEMMER, receiver, Intervenors.	73 Civ. 2518 (CES) INTERVENOR COMPLAINT

Intervenor John K. Schemmer, as receiver, by his attorneys Carter, Ledyard & Milburn, for his intervenor complaint, alleges upon information and belief, except that paragraphs 1 and 2 are alleged upon intervenor's knowledge:

1. This Court, by a Final Judgment of Permanent Injunction and Appointment of Receiver dated September 28,

1973 (the "Final Judgment") in Securities and Exchange Commission v. Robert L. Vesco, et al., 72 Civ. 5001 (CES) (the "SEC action"), appointed this intervenor receiver to take possession of, inter alia, all the assets of Property Resources Limited ("PRL") and directed this intervenor, as such receiver, to take all necessary steps to preserve the assets of PRL and its subsidiaries. The Final Judgment also permanently enjoins defendants Norman LeBlanc, Value Capital Ltd., Global Holdings Ltd., Global Financial Ltd., International Bancorp, and Bahamas Commonwealth Bank, among others, from disposing of in any way any assets of PRL and its subsidiaries.

2. This intervenor was authorized to make a motion to intervene in this action by an order of this Court dated May , 1974 entered in the SEC action, a copy of which is annexed hereto as Exhibit A, and this intervenor intervenes herein solely in his capacity as receiver and pursuant to that order to aid in the accomplishment of the ends sought and directed in the SEC action.

3. Plaintiff International Controls Corp. ("ICC") is a Florida corporation which has its principal place of business in Thomaston, Connecticut.

4. (a) Defendant Robert L. Vesco is a United States citizen who, at all times during the period relevant to this complaint, together with defendant Norman LeBlanc, controlled and dominated intervenor Andean Credit S.A. and defendants Global Holdings Ltd., Global Financial Ltd., Value Capital Ltd., International Bancorp, Bahamas

Commonwealth Bank, and Columbus Trust Company, Limited. He has served as a director and president of defendant Value Capital Ltd., a director of defendant International Bancorp, and a director of defendant Bahamas Commonwealth Bank.

(b) Defendant Norman LeBlanc is a Canadian citizen. He has been the principal shareholder of defendant Global Holdings Ltd. and has served as a director of defendant Global Holdings Ltd., president and a director of defendant Global Financial Ltd., and a director of defendant International Bancorp.

(c) Defendant Richard E. Clay is a United States citizen who has served as president and a director of defendant Value Capital Ltd., vice president and a director of defendant International Bancorp, and a director of defendant Bahamas Commonwealth Bank.

(d) Defendant Global Holdings Ltd. is a Bahamian corporation which has controlled defendant Global Financial Ltd., and through it, defendants Value Capital Ltd., International Bancorp, and Bahamas Commonwealth Bank at all times during the period relevant to this complaint.

(e) Defendant Global Financial Ltd. is a Bahamian corporation.

(f) Defendant Value Capital Ltd. is a Bahamian corporation which has controlled PRL at all times during the period relevant to this complaint.

(g) Defendant International Bancorp is a Bahamian corporation which has controlled defendant Bahamas Commonwealth Bank at all times during the period relevant

to this complaint.

(h) Defendant Bahamas Commonwealth Bank is a Bahamian corporation.

(i) Defendant Columbus Trust Company, Limited ("Columbus Trust") is a Bahamian corporation. Until March 1973 defendant LeBlanc owned, directly or indirectly, approximately sixty percent of the outstanding shares of Columbus Trust.

5. Intervenor Andean Credit S.A. ("Andean") is a Panamanian corporation.

6. In or about March 1973 the defendants listed in Paragraph 4 hereof misappropriated approximately $9,050,000 of funds held in certificates of deposit for the account of PRL in London, England by arranging for Columbus Trust to manage said account and having Columbus Trust liquidate such certificates of deposit and withdraw the said $9,050,000 from the account.

7. Said defendants expended approximately $1,500,000 of the misappropriated funds through Andean and Mackinley Limited, a Bahamian corporation ("Mackinley"), for the purchase, chartering, repair and refitting of the yacht "Patricia III", which is of Panamanian registry and is now being held in Florida under this Court's preliminary injunction issued on October 5, 1973 in this action. Andean and Mackinley acted throughout merely as nominees of said defendants and a conduit for the misappropriated funds.

8. By reason of the foregoing, this intervenor, as receiver, is entitled to possession of the yacht

"Patricia III" and to the proceeds of any sale thereof.

WHEREFORE, this intervenor, demands judgment:

(a) Declaring that this intervenor, as receiver, is entitled to possession of the yacht "Patricia III" and to the proceeds of any sale thereof; and

(b) That this intervenor be awarded the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May , 1974

CARTER, LEDYARD & MILBURN

By _____
A Member of the Firm

Attorneys for Intervenor
John K. Schemmer, Receiver
2 Wall Street
New York, New York 10005
(212) 732-3200

73 Civ. 2518 (CES)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

COPY

ORDER TO SHOW CAUSE

CARTER, LEDYARD & MILBURN
ATTORNEYS FOR John K. Schemmer, Receiver.

2 WALL STREET
NEW YORK, N. Y. 10005
HECTOR 2-8200

LETTER OF HANNOCH, WEISMAN, STERN & BESSER, ESQS. TO JUDGE CHARLES E. STEWART, DATED MAY 10, 1974

Honorable Charles E. Stewart, Jr.
United States District Court
United States Court House
Foley Square
New York, New York

Re: International Controls Corp.
vs. Vesco, et al.
Index No. 73 Civ. 2518 (CES)

Dear Judge Stewart:

As Your Honor is aware, we represent defendant Vesco & Co., Inc. in the above matter.

We have presently pending before the Supreme Court of the United States a Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit dated January 15, 1974 which, in part (and this is part of the review we seek) sustained jurisdiction over Vesco & Co., Inc. in this proceeding.

We therefore continue to make our appearance herein under the protest to jurisdiction reflected in our initial motion before this Court and our papers filed both in the Second Circuit and the Supreme Court, and solely for the purpose of protecting our client's interest in these on-going proceedings without waiving its obligations to jurisdiction, service of process, etc.

We are writing to Your Honor at this point in time because it has just come to our attention (we were not served with any papers as counsel for Vesco & Co., Inc. although a copy of a "Notice of Partial Inquest" was received by us

today) that Your Honor intends to hold a hearing pursuant to R. 55 (b)(2) on May 14, 1974 at 4:00 P.M. at the request of counsel for International Controls Corp. "for the purpose of making a partial determination of plaintiff's loss, damage, costs and expenses for which defendant Robert L. Vesco has been found to be liable to plaintiff" as reflected in a judgment entered on October 5, 1973.

We are writing to Your Honor with, essentially two sets of requests, which are somewhat interrelated.

1. We request that the hearing be adjourned without date pending the Supreme Court's disposition of Vesco & Co., Inc.'s Petition for Certiorari. We request this because, for the reasons set forth below, based on the determinations that are presently of record in this case but subject to review by the Supreme Court, it appears to us essential that Vesco & Co., Inc. have a full opportunity to appear, to cross-examine, and if deemed appropriate to present evidence at the 55 (b)(2) hearing, and it should not be put to this task nor should the Court's facilities be utilized unless and until the Supreme Court in effect rules that Vesco & Co., Inc. is properly a party to this case in terms of jurisdiction, process, etc. Obviously, if the Supreme Court grants certiorari and determines that there is no jurisdiction over Vesco & Co., Inc., we would suspect we have no further interest in the matter.

2. In the event Your Honor is inclined to proceed with the 55 (b)(2) hearing while our Petition in the Supreme Court is pending and before decision, in such event we respectfully request an adjournment of not less than 10 days to enable us to properly participate and prepare for such participation in this matter. Presumably, the proofs will consist of both testimonial and documentary matter, and we believe that we should be given the opportunity to discover what they consist of and to prepare if necessary

to meet them. To that end, we believe that some sort of pre-hearing discovery, even if on an informal basis, is mandated so that we may ascertain what proofs International Controls Corp. intends to present.

We anticipate and respond to the obvious question as to why Vesco & Co., Inc. is seeking to participate in this particular proceeding. We believe the answer is equally obvious, and it lies in this Court's preliminary determination, embodied in its "findings of fact and conclusions of law dated July 2, 1973" incorporated in its order of July 3, 1973 to the effect that "it appears that Vesco & Co. is a corporate alter ego for defendant Robert Vesco" (finding of fact #11), that it is a "shell" into which "Vesco has deposited°°°the largest portion of his shares of I.C.C." (finding of fact #16); and the relief presumably granted by way of injunction based upon those preliminary "findings". We add to this the portion of the order signed by Your Honor dated July 3, 1973 in the matter of Securities & Exchange Commission v. Vesco, et al. (72 Civ. 5001) which refers to "defendant Vesco & Co., Inc." even though Vesco & Co., Inc. was never a named party in that action. (We pointed the fact out to Your Honor at the oral argument last summer, but Your Honor did not see fit to change the wording of that order).

All of the foregoing, plus the repeated insistence by International Controls Corp., both before Your Honor and in the New Jersey State Court action in which Vesco & Co., Inc. is plaintiff, to the affect that Vesco & Co., Inc. is a "corporate alter ego" or "shell" or otherwise identical with Robert L. Vesco, leads us to conclude, on its behalf, that, at least in the context of a potential money judgment against Robert L. Vesco, and the potentiality that this Court may adopt its preliminary findings of "alter ego" as final findings at some point, Vesco & Co., Inc. should be fully heard and should have a full opportunity to appear and cross-examine as to all aspects of any money judgment

which the plaintiff may subsequently seek to impose upon Vesco & Co., Inc. as an alleged "alter ego".

We should emphasize that in stating the foregoing, which is simply a reflection of the existing record in this case, we in no way concede the accuracy or propriety of the contention and "finding" of alter ego. However, the practicalities of the present state of the record in this case make it incumbent upon us to defend Vesco & Co., Inc. at this stage against a potential money judgment ostensibly against Robert L. Vesco, which may well be magically transformed into one against Vesco & Co., Inc.

To summarize them, our requests are as follows:

1. That the 55 (b)(2) hearing be adjourned without date until the Supreme Court rules on our Petition.

2. Alternatively, that the hearing be postponed in order that we may have an opportunity to prepare for it and to have some pre-hearing discovery.

3. As a last alternative, that the hearing be conducted in such a way as to give us ample opportunity to prepare and present our response to the "proofs" which, presumably, International Controls Corp. will attempt to introduce.

We would appreciate a response from Your Honor in advance of the May 14 date, but in the absence of same, we will of course be there; and if Your Honor wishes to have a conference with respect to this matter at that time, in any event, we are available.

Respectfully yours,

/s/
LAWRENCE B. ORLOFF

LBO/sjo

cc: Shea, Gould, Climenko & Kramer, Esqs.

Letter of Shea, Gould, Climenko & Kramer, Esqs.,
to Judge Charles E. Stewart, dated May 13, 1974.

(706a - 709a)

Letter Memorandum 707a

SHEA GOULD CLIMENKO & KRAMER

330 MADISON AVENUE

NEW YORK, NEW YORK 10017

AREA CODE 212
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CABLE ADDRESS:
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C. LEONARD GORDON
SHELDON D. CAMHY
SAMUEL W. INGRAM, JR.
FREDRIC J. KLINK
JOHN J. MCDERMOTT
WILLIAM A. KAGAN, JR.
PETER GETTINGER
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KEVIN B. MCGRATH
LEON P. GOLD
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VINCENT W. QUINN, JR.
RONALD H. ALENSTEIN
HERMAN A. SURSKY
ARNOLD S. JACOBS

MILES F. MCDONALD
SAUL S. STREIT
CHRISTOPHER C. MCKENNA
OF COUNSEL

May 13, 1974

BY HAND

Honorable Charles E. Stewart, Jr.
United States District Court
United States Court House
Foley Square
New York, New York

Re: International Controls Corp.
v.
Vesco, et. al.
Index No. 73 Civ. 2518 (CES)

Dear Judge Stewart:

We have just now received a copy of a letter addressed to Your Honor from Laurence B. Orloff of Hannoch, Weisman, Stern & Besser, attorneys for defendant Vesco & Co., Inc. ("Vesco & Co."). In that letter Mr. Orloff requests either (a) that the partial inquest scheduled for tomorrow be adjourned until the United States Supreme Court rules on Vesco & Co.'s Petition for a Writ of Certiorari; (b) that the inquest be adjourned to give Vesco & Co. an opportunity to have some pre-hearing discovery or (c) that the hearing be conducted in such a way as to give Vesco & Co. an "ample opportunity to prepare and present" their response to the proof ICC will present at the inquest. For the reasons outlined below, we respectfully suggest that all of these requests should be denied.

cont'd.....

As Your Honor may recall the theory under which Vesco & Co. was brought in as a defendant in this case is that it was the transferee of certain assets from Robert L. Vesco and that such assets should be preserved pending the determination of this action. In its decision affirming Your Honor's July 3, 1973 preliminary injunction, the Court of Appeals stated:

> ". . . we have sustained 1934 Act jurisdiction over a corporation that participated in the fraudulent scheme solely as transferee for the illicit fruits. SEC v. Manor Nursing Centers, Inc., supra (jurisdiction over defendant Capital Cities Nursing Centers, Inc.)."

and went on to say that you "had ample power, as a court of equity, to reach those assets under the jurisdictional purview of the 1934 Act."

Thus, Vesco & Co.'s presence in this case was necessitated by its role as the transferee of certain assets not be reason of any specific allegations of wrongdoing on its part. Counsel for Vesco & Co. now seeks, in effect, to use plaintiff's "alter ego" theory, advanced for the purpose of reaching those assets, in order to justify his appearance herein on Robert Vesco's behalf. We respectfully suggest that if Robert L. Vesco desires to participate in these proceedings in any manner or degree he should be required to do so in the normal and customary way, i.e., by entering his appearance on his own behalf and not through a corporate alter ego.

Cont'd.....

SHEA GOULD CLIMENKO & KRAMER

The holding of the partial inquest, we submit, will not in any way prejudice Vesco & Co.'s position herein. Your Honor will not be asked to make any determination on the "alter ego" question nor on plaintiff's right to enforce any judgment against the assets of Robert Vesco presently being held by Vesco & Co. The sole question being presented to Your Honor is the amount of damages plaintiff has sustained by reason of the wrongful acts of Robert L. Vesco set forth in the complaint.

Respectfully yours,

SHEA GOULD CLIMENKO & KRAMER

By: _____
Daniel L. Carroll

DLC:mc
cc: Hannoch, Weisman, Stern
& Besser
744 Broad Street
Newark, New Jersey 07102

Arum, Friedman & Katz
450 Park Avenue
New York, New York 10022

Prehearing Memorandum of Defendant, Vesco & Co., Inc., dated May 21, 1974.

(710a - 722a)

RECEIVED
CHAMBERS
JUDGE STEWART
MAY 11 1978

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., : 73 Civ. 2518 (CES)

Plaintiff, :

-against- :

ROBERT L. VESCO, et al., :

Defendants. :

PREHEARING MEMORANDUM OF DEFENDANT, VESCO & CO., INC.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant, Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102
201/621-8800

-and-

ARUM, FRIEDMAN & KATZ
450 Park Avenue
New York, New York 10022
212/371-3200

Of Counsel:
Laurence B. Orloff

On the Brief:
Gary S. Freedman

1/19

STATEMENT OF FACTS

This memorandum is submitted by defendant, Vesco & Co. Inc., in connection with the application of plaintiff, International Controls Corp. (hereinafter referred to as "ICC"), for a hearing to make a partial determination on damages allegedly suffered by plaintiff as a result of the alleged wrongdoings of defendant, Robert L. Vesco. A judgment by default was entered against Vesco on October 9, 1973. ICC states that it intends to prove "partial" damages in the amount of $2,178,354.93, and it also seeks to retain "those portions of the Final Judgment calling for a hearing on the question of damages so as to permit ICC to prove additional damages against Vesco" (plaintiff's Pre-Hearing Memorandum, p. 10).

Plaintiff has alleged in the Amended Complaint that defendant, Vesco & Co. Inc., is "dominated and controlled" by defendant, Vesco, and further, that "Vesco & Co. is the alter ego of Vesco" [paragraph 5(q)]. On July 3, 1973, this Court made a preliminary determination, embodied in its "Findings of Fact and Conclusions of Law" and incorporated in its Order of the same date, to the effect that "it appears that Vesco & Co. is a corporate alter ego for defendant, Robert Vesco" (finding of fact #11); and that it is a "shell" into which "Vesco has deposited the largest portion of his shares of ICC" (finding of fact #16).

It should also be noted at this point, that at the initial hearing befc the Court in this "partial inquest" on

May 14, 1974, Sheldon D. Camhy, Esq. attorney for plaintiff, stated the following to the Court:

> "Your Honor, what is sought this afternoon is a money judgment against Robert Vesco. If such a judgment is secured, that judgment will be taken for the purpose of executing against such assets as Robert Vesco has in the United States or otherwise subject to execution.
>
> Right now it is our contention that this boat sitting in Miami is Robert Vesco's property and that certain shares of stock held in the name or held by Vesco & Co. are Robert Vesco's property." (Emphasis added).

Vesco & Co., Inc., presently has pending before the Supreme Court of the United States a Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, dated January 15, 1974, which had affirmed the above-mentioned Order of this Court and sustained jurisdiction over Vesco & Co., Inc. in this proceeding. Vesco & Co., Inc. in no way waives its objections to jurisdiction, service of process, etc., but appears herein solely to protect its interests in these ongoing proceedings.

ARGUMENT

POINT I

THIS HEARING SHOULD BE ADJOURNED UNTIL AFTER A DETERMINATION HAS BEEN MADE AS TO THE LIABILITY OF THE OTHER NAMED DEFENDANTS IN THIS ACTION.

Plaintiff has alleged in its Amended Complaint that defendant, Robert L. Vesco, "has acted in concert with and has been aided and abetted" by twenty-five other named defendants in certain alleged fraudulent practices. Under such circumstances, when joint liability on the part of a number of defendants is alleged, the correct and appropriate procedure for the Court to followwhen one defendant defaults is to consolidate the Fed. R. Civ. Proc. 55(b)(2) hearing required to assess the liability of the defaulting party with the trial against the non-defaulting parties. 6 Moore's Federal Practice, §55.06; Frow v. De La Vega, 15 Wall 552, 21 L. Ed. 60 (1872); Davis v. National Mortgage Corp., 320 F.2d 90 (2d. Cir. 1963); Ferguson v. Bartels Brewing Co., 284 F.2d 855 (2d. Cir. 1960); 47 Am. Jur. 2d, Judgments, §1192 (1969).

No clearer case could be imagined than the within action in which this practice should be utilized. An alleged conspiracy to commit tortious conduct is a classic example of potential joint liability [6 Moore's Federal Practice, §55.06; 1 Harper & James, The Law of Torts, §10.1, 10.2 (1956)], and this is precisely what is alleged herein by plaintiff.

The consolidation of the hearing regarding the defaulting party with the trial of the other defendants is a matter of "sound judicial administration" (6 Moore's Federal Practice, 55.06). It not only insures that damages will be determined in an adversary hearing, but more important, it avoids duplication of effort by the Court. If any of the other numerous defendants in this action are ultimately found liable to plaintiff for "aiding and abetting" defendant, Robert L. Vesco, much, if not all, of the evidence to be introduced at this "partial inquest" will have to be re-introduced again at a later date. This would prove to be a gross waste of time and money to both the Court and to counsel involved. Plaintiff has made no showing why it is imperative that such a hearing be held at this time, and this defendant respectfully urges this Court to exercise its sound discretion in this area and adjourn this hearing until such time as all parties are in Court for the resolution of all pertinent issues in this case.

Even if the Court is not disposed to grant the above application, Vesco & Co., Inc. reiterates the request made to the Court in the letter of Laurence B. Orloff, dated May 10, 1974, that this hearing at least be adjourned until there is a disposition by the Supreme Court of Vesco & Co., Inc.'s Petition for a Writ of Certiorari, and additionally, that Vesco & Co., Inc. be permitted to conduct some pre-hearing discovery to determine what proofs plaintiff intends to present.

POINT II

ASSUMING THAT THE COURT PERMITS THE HEARING TO CONTINUE AT THIS TIME, DEFENDANT, VESCO & CO., INC., SHOULD BE PERMITTED TO CONTEST THE LIABILITY OF DEFENDANT, ROBERT L. VESCO, AND IN ANY EVENT, IS ENTITLED TO FULLY PARTICIPATE IN ALL ASPECTS OF THIS HEARING.

A. BECAUSE OF THE UNIQUE NATURE OF PLAINTIFF'S ALLEGATION THAT THIS DEFENDANT IS MERELY THE ALTER EGO OF ROBERT L. VESCO, VESCO & CO., INC. SHOULD BE ENTITLED TO CONTEST ANY ASPECT OF THE LIABILITY ASSERTED AGAINST ROBERT L. VESCO.

The repeated allegations and insistence of plaintiff that defendant, Vesco & Co., Inc., is a "corporate alter ego" or "shell", or otherwise identical with Robert L. Vesco, places this defendant, as a practical matter, in a position whereby any money judgment recovered by plaintiff ostensibly against Robert L. Vesco may well be magically transformed at some later date into a judgment against Vesco & Co., Inc. In fact, Mr. Camhy's statement before the Court on May 14, 1974 as noted above, can only be interpreted to mean that not only is such a scenario a possibility, but that it is actually planned and contemplated by ICC.

Under such circumstances, Vesco & Co., Inc. believes that it has no choice but to appear herein and fully participate at this hearing, although it continues to vigorously dispute the accuracy and propriety of the contention and "finding" of alter ego.

Because of the nature of the alter ego allegations, Vesco & Co., Inc. contends that it must be afforded the right not only to contest the amount of damages sought by plaintiff against Vesco, but also Vesco's alleged liability as well. The position in which Vesco & Co., Inc. now finds itself is analogous to the

principal-surety area, and specifically, to the rights of a surety to contest the principal's liability if the principal has defaulted.

The rule is quite clear that a surety stands in the shoes of the principal, and that the surety generally has the right to raise any defense which the principal could assert. In Modern Brokerage Corp. v. Massachusetts Bond & Insurance Co., 54 F. Supp. 939 (S.D.N.Y. 1944), for example, plaintiff sued the defendant surety to recover on a performance bond for certain construction work. The surety raised the defense that the plaintiff had refused to enter arbitration proceedings, despite the principal's demand, and accordingly, that the action should be stayed until the principal's right to compel arbitration of disputes was given effect.

The Court upheld the surety's position, and its right to raise that defense, which was in actuality a defense belonging to the principal, for the "natural limit of the obligation of the surety is to be found in the obligation of the principal." (54 F. Supp. at p. 940). See also United States v. Continental Casualty Co., 214 F. Supp. 949 (D. P.R. 1963); Centraal Stikstof Verkoop., N.V. v. Alabama State Docks Dept., 415 F.2d 452 (5th Cir. 1969); Asociacion De Az. De Gua. v. United States National Bank of Oregon, 423 F.2d 638 (9th Cir. 1970).

If ICC intends to impute both the purported liability of Robert L. Vesco in this action and any damages ultimately assessed against him as well to Vesco & Co., Inc., and to then

attempt to execute against the assets of Vesco & Co., Inc., then Vesco & Co., Inc. should be permitted to contest any finding of liability, and to assert any defenses which Vesco himself could have raised to the allegations of the complaint.

Vesco & Co., Inc. is in the same position herein as a surety, and is thus able to plead any defense available to the principal. To rule otherwise would be to permit ICC to have its cake and eat it too, for they would attempt to impute a judgment against Vesco & Co., Inc. without ever having to prove the allegations on which the judgment is based.

Yet another example of an analogous situation supporting Vesco & Co., Inc.'s position herein can be found in United States v. Borchardt, 470 F.2d 257 (7th Cir. 1972). The Government sought in that case to foreclose a federal tax lien on certain property owned presently by defendant, Borchardt, but previously by defendant, Mensik. Borchardt asserted the defense that the statute of limitations had run, and that certain waivers of limitation purportedly signed by Mensik were in fact fraudulent. Mensik defaulted, however, and the United States asserted that Borchardt could no longer allege defenses "through" the defaulting party.

The Court rejected the Government's position, and stated that Borchardt, as the grantee of the property in question, could assert the above-mentioned defenses, despite the fact that Mensik herself had defaulted. See also Hawkeye-Security Ins. Co. v. Schulte, 302 F.2d 174 (7th Cir. 1962).

Thus, Vesco & Co., Inc. is not merely in the position of a corporation which may or may not hold property belonging to a judgment debtor. It is a named party against whom a conspiracy to commit fraud is alleged, as well as the charges of alter ego. Both as a matter of sound judicial discretion and of procedural due process rights, Vesco & Co., Inc. is entitled to appear at this hearing and contest not only damages, but the purported liability of defendant, Robert L. Vesco, as well.

B. IN ANY EVENT, VESCO & CO., INC. IS CLEARLY ENTITLED TO FULLY PARTICIPATE IN THIS HEARING ON THE ISSUE OF DAMAGES.

Because of the various allegations and "findings", as described above, that Vesco & Co., Inc. is an alter ego and "shell" for Robert L. Vesco, as well as because of I.C.C.'s expressed intention to attempt to execute on the assets of Vesco & Co., Inc. to satisfy any judgment against Robert L. Vesco, this defendant is clearly entitled to appear and fully participate in all aspects of any hearing on damages, regardless of the Court's decision on the issues raised in subsection A above. If I.C.C. wishes to place Vesco & Co., Inc. "in the shoes" of Robert L. Vesco, it must be prepared to permit Vesco & Co., Inc. the right normally accorded any defaulting party to participate in the hearing under Fed. R. Civ. Proc. 55 (b)(2).

It is absolutely clear that such participation includes the right to present evidence and affirmative testimony regarding the issue of damages, as well as to cross-examine and contest any evidence introduced by plaintiff. See Peitzman v. City of Illmo, 141 F.2d 956, 962 (8th Cir. 1944), where the Court stated:

> "On a hearing on the question of damages, under Rule 55 (b) a defendant, though in default, is in court on a hearing limited to the question of the amount of damages,

to the same extent that he is in court in a trial on the merits..."

See also Wilbur v. Arkuszewski, 52 F.R.D. 291 (E.D. Tenn. 1970).

This procedure was followed by the Second Circuit in Trans World Airlines, Inc. v. Hughes, 449 F.2d 51 (2d Cir. 1971). The affirmative proofs submitted by Toolco in that case were permitted to be used for the purpose of disproving or mitigating damages. Judge Metzner had previously approved Toolco's full participation in the hearing under Fed. R. Civ. Proc. 55 (b)(2) in Trans World Airlines, Inc. v. Hughes, 32 F.R.D. 604 (S.D. N.Y. 1963), citing Peitzman v. City of Illmo, supra.

Thus, regardless of all other considerations, if the Court decides to proceed with this hearing at this time, defendant, Vesco & Co., Inc., should and must fully participate in all aspects of this "partial inquest" as to damages.

CONCLUSION

For the reasons stated above, defendant, Vesco & Co., Inc., urges the Court to adjourn this hearing until such time as a determination has been made on the liability of the other named defendants in this action. If the Court decides to continue the hearing at this time, Vesco & Co., Inc. respectfully contends that it is entitled to fully participate not only on the issue of damages, but on the question of Robert L. Vesco's liability as well.

Respectfully submitted,

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant, Vesco & Co., Inc.

By _____
Laurence B. Orloff
A Partner

-and-

ARUM, FRIEDMAN & KATZ

Of Counsel:
Laurence B. Orloff

On the Brief:
Gary S. Freedman

DATED: May 21, 1974

Prehearing Memorandum of Plaintiff.

(723a - 736a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, et. al., :

Defendants. :

----------x

Index No.

73 Civ. 2518 (CES)

PRE-HEARING
MEMORANDUM

SHEA GOULD CLIMENKO & KRAMER
ATTORNEYS FOR Plaintiff
330 MADISON AVENUE
NEW YORK, N.Y. 10017
212 661-3200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, et. al., :

Defendants. :

----------x

Index No.

73 Civ. 2518 (CES)

PRE-HEARING
MEMORANDUM

Preliminary Statement

On October 9, 1973 a judgment by default was entered against Robert L. Vesco (the "Judgment"). This memorandum is submitted on behalf of plaintiff International Controls Corp. ("ICC") in connection with the hearing to be held in order to make a partial determination of the damages suffered by ICC by reason of the wrongdoings alleged in the complaint. The damages ICC intends to prove, in the amount of $2,178,354.93 all arose by reason of amounts paid by ICC in connection with Vesco's use of a certain Boeing 707 aircraft.

The Complaint

Although ICC has served an amended complaint action, the Judgment against Vesco was entered on the original complaint filed on June 7, 1973. As reflected in the Judgment, Vesco was served with the summons and complaint on July 30, 1973.

The damages ICC intends to prove at the hearing were suffered by reason of the matters alleged in Counts Two, Three and Four of the complaint. More specifically, it is alleged that a certain dividend in kind of all of the outstanding shares of Fairfield General Corporation ("Fairfield General"), then a wholly-owned subsidiary of ICC, was declared in furtherance of Vesco's scheme to obtain control of IOS and its assets and of other assets of ICC, independent of ICC and at ICC's expense, which scheme is described in detail in Count One of the complaint, the allegation of Count One being repeated and realleged in Count Two (Complaint, ¶¶ 19-21). In particular, it is alleged that Vesco and others agreed that they would use the dividend in kind as a means to acquire for their own personal use various assets of ICC, ultimately

to include a Boeing 707 airplane (Complaint, ¶ 21).

Thus, it is alleged that Vesco caused Skyways Leasing Corporation ("Skyways"), a wholly-owned subsidiary of Fairfield Aviation Corporation ("Fairfield Aviation") which was in turn a wholly-owned subsidiary of ICC, to purchase a Boeing 707 airplane in June of 1971. In connection with this purchase ICC advanced Skyways $343,750 (Complaint, ¶ 23).

It is then alleged that Vesco caused ICC to lease the 707 to ICC under a five-year lease pursuant to which ICC would pay Skyways $100,000 for each of the last 3 months of 1971, $83,000 per month during 1972 and $47,000 per month during the years 1973 through 1976 (Complaint, ¶ 24); that Vesco failed to disclose the full term of the lease and its unfairness to ICC and the lavish renovation made to the 707 to ICC's Board of Directors and its shareholders and failed to disclose that the lease was merely a device by which Vesco would force ICC to pay for an airplane (and its operation and maintenance) which was for his own personal use and that the 707 was not necessary to ICC's business and was not intended to be used in such business (Complaint, ¶ 26); and

that Vesco deceived ICC and its directors and stockholders into continuing to make payments under the lease by falsely representing to ICC that its use of the 707 would not cost ICC any money in that ICC would be reimbursed for Vesco's use of the airplane (Complaint, ¶ 27). That by late 1972 ICC had incurred expenses in connection with the 707 amounting to more than $500,000 but had been reimbursed for less than 25% of that amount (Complaint, ¶ 27); and that Vesco repeatedly refused to obtain such reimbursement (Complaint, ¶ 27). By reason of the above allegation, an accounting is demanded.

It is also alleged in Count Three that the above described activities constituted self-dealing by Vesco and the use by him of assets of ICC for his own personal benefit, in breach of his fiduciary duty as an officer and director of ICC and, in Count Four that the lease of the 707 was not necessary or proper to ICC's business, fulfilled no proper corporate purpose and, therefore, constituted a waste and diversion of corporate assets, for which an accounting is also demanded.

The Judgment

The Judgment, in addition to granting certain injunctive relief against Vesco adjudged that Vesco account to ICC for all injury sustained by it by reason of the acts alleged in the complaint and adjudged Vesco liable to ICC for all the loss, damage, cost and expense suffered by it by reason of the acts alleged in the complaint, said loss, damage, cost and expense to be determined by the court upon a hearing, to be held on a day designated by ICC upon its giving Vesco 10 days notice of such hearing.

On April 29, 1974 ICC served upon Vesco, as required by, and in accordance with, the Judgment, a Notice of Partial Inquest, informing him that a hearing to make a partial determination of ICC damages would be held on May 14, 1974 at 4:00 P.M.

The Law Applicable to the Hearing

Rule 55(b)(2) of the Federal Rules of Civil Procedure provides in relevant part:

> "If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an

> account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings . . . as it deems necessary and proper . . ."

However, it is firmly established that the purpose of the hearing provided for in Rule 55(b)(2) is not to determine the question of liability. As Judge Metzner observed in Trans World Airline, Inc. v. Hughes, 38 F.R.D. 499 (S.D.N.Y 1965):

> "Liability is not an issue for the Special Master* except in a very limited sense. The sufficiency of the complaint has already been established by the denial of defendant's motion to dismiss. 214 F. Supp. 106 (S.D.N.Y. 1963), aff'd., 332 F. 2d 602 (2d Cir. 1964), writ of cert. dismissed, 380 U.S. 248, 85 S. Ct. 934, 13 L. Ed. 2d 817 (1965). By virtue of the default the defendant has admitted the truth of the well-pleaded allegations of the complaint. Thomson v. Wooster, 114 U.S. 104, 5 S. Ct. 788, 29 L. Ed. 105 (1885)." (38 F.R.D. at 501)

The Court of Appeals in a subsequent appeal in the Trans World Airline case (449 F. 2d 51 [2nd Cir. 1971] rev. on other grounds 409 U.S. 363 [1973]) referred with approval to the above quoted passage of Judge Metzner's

* In the Trans World Airline's case, Judge Metzner had referred the matter to a Special Master for the purpose of determining damages.

opinion and went on to state, in connection with the attempt by the defendant there to introduce evidence on the liability question at the damage hearing:

> "Toolco now attempts to hoist Judge Metzner by his own petard in directing our attention . . . to certain 'material in the file of the case' introduced by Toolco during the hearing on damages which according to Toolco has not been 'controverted' by TWA. But this argument stands the matter on its head and implies that it was TWA's responsibility to defend the allegations of its complaint by rebutting adverse matter introduced by Toolco in the damage hearing. TWA had no obligation to introduce any evidence whatever in support of the allegations of its complaint. Matter introduced by Toolco to disprove or mitigate damages which only tends to contradict the allegations of the complaint has no legal effect except as it bears on the question of damages unless it could not conceivably have been refuted and disproved by TWA had there been a trial and thus is 'indisputable.' It would usher in a new era in the dynamics of litigation if a party could suffer a default judgment to be entered against it and then go about its business as if the judgment did not exist and as though, despite the opportunities to comply with the court's orders and to defend on the merits which had been ignored, the slate was wiped clean and a new day had dawned. To state the proposition is to expose the folly of it.
>
> The applicable principles are clearly implied from Thomson v. Wooster, supra, where the court held that defendants who had defaulted in a patent infringement suit would not be permitted to show that the patent sued upon was invalid. . . . We are instructed by Wooster that so long as the facts as painted by the complaint 'might * * * have been the case' they may not now be successfully controverted by Toolco. There

> was a time for that and Toolco cannot elect to default and then defend on the merits. It cannot have its cake and eat it too. . . TWA need not introduce any facts whatever in support of its complaint. Judgment has already been entered in its favor on a complaint held on the earlier appeal to this court to state a sufficient claim. Only damages remained to be determined." (449 F. 2d at 63-64; emphasis added)

See Brown v. Kenron Aluminum & Glass Corp., 477 F. 2d 526 (8th Cir. 1973) where the court held:

> "A judgment by default is as conclusive an adjudication of the issues for purposes of res judicata as a judgment rendered after a trial on the merits. Riehle v. Margolies, 279 U.S. 218, 225 (1929). The allegations of the complaint, in effect, become findings of fact."(477 F. 2d at 531; emphasis added)

From the foregoing, it is clear that ICC is not required to offer any proof at the hearing in support of the allegations of the complaint. Such allegations are, by reason of Vesco's default, deemed admitted and are "in effect . . . findings of fact."

The Damages to Be Proved

As previously indicated, the damages ICC will prove at this time all relate to amounts paid by it in connection with the purchase and use by Vesco of the Boeing 707. With the exception of $343,750 advanced by ICC in connection with the purchase of the 707 in June of 1971, these damages, which total $2,178,354.93 are all a result of amounts paid by ICC in 1972 and the early part of 1973. It will be shown that ICC has not been reimbursed for any of these expenditures*.

Annexed hereto is a schedule which was prepared by Robert Ost, ICC's controller. Mr. Ost, who was ICC's assistant controller in 1971, with the responsibility for processing all invoices received by ICC and seeing that appropriate entries were made on ICC's books will be ICC's witness at the hearing. In addition to providing a foundation for the receipt into evidence of the annexed schedule, Mr. Ost will also authenticate numerous invoices and other books and records of ICC which provide the back-up for the annexed schedule.

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* ICC was in fact reimbursed for expenditures incurred in connection with Vesco's use of the 707 during 1971.

Conclusion

Upon completion of the partial inquest, ICC will request the Court to enter judgment amending the Final Judgment, and awarding ICC judgment against Robert L. Vesco in the amount of $2,178,354.93 but retaining those portions of the Final Judgment calling for a hearing on the question of damages so as to permit ICC to prove additional damages against Vesco.

Respectfully submitted,

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330 Madison Avenue
New York, New York 10017
Tel.: (212) 661-3200

Legal Memorandum

735a

Prepared by [illegible] 5/31/74
Approved by

Lee

12/31/73

Summary of amounts due for RLV Travel -

1	2	3	4
Balance per summary for period January, 1972 through January, 1973 attached -			$ 2371.17123
Adjustments - Add (deduct):			
Cash received during -			
December, 1972		4549.7408	
January, 1973		6731.50	(522.08758)
Overpayment on balance for December 31, 1971 paid during 1972			(537.50)
Misc. adjustment to reconcile to G/L balance			89.708
	Total @ 12/31/73 -		$ 1844.60493

1972

1972 → 1973

| | $ 23000 - $ 33333 | $ 33333 - $ 43000 | $ 43000 - $ 53333 | $ 53333 - $ 63333 | $ 63333 - $ 73333 | $ 73333 - $ 83333 | $ 83333 - $ 93333 | $ 93333 - $ 103333 | $ 103333 - $

TRANSCRIPT OF PROCEEDINGS BEFORE JUDGE CHARLES E. STEWART, DATED MAY 22, 1974

Before:

HON. CHARLES E. STEWART, JR.,
District Judge
New York, New York
May 22, 1974—10:20 A.M.

APPEARANCES:

SHEA, GOULD, CLIMENKO & KRAMER, Esqs.
Attorneys for Plaintiff

DANIEL L. CARROLL, Esq.
JOHN GRIMES, Esq.

of Counsel

HANNOCH, WEISMAN, STERN & BESSER, Esqs.
Attorneys for Vesco & Co., Inc.

LAURENCE B. ORLOFF, Esq.
GARY S. FREEDMAN, Esq.

of Counsel

(2) THE COURT: Good morning.

Yes, Mr. Carroll.

MR. CARROLL: We call Mr. Ost to the stand.

THE COURT: Now, before we proceed, we ought to deal with the application of Vesco & Co., Inc.

MR. ORLOFF: If I may, your Honor, we delivered rather late yesterday to your Honor a brief which I hope

amplifies and clarifies our position and I would like to reiterate the request that I made to your Honor by letter, I believe on May 10th, asking, No. 1—I realize this has already started, but it hasn't gone too far yet—that this matter be adjourned.

As pointed out in our brief, it is not only for the reason, although I repeat the reason—

THE COURT: I am not going to adjourn the hearing. It seems to me the important question is whether you are entitled to participate.

MR. ORLOFF: If your Honor, please, I simply want the record to reflect the request and, if I may, the reasons.

The reasons have to do not only with Vesco & Company's position here, but its position as a co-defendant, alleged co-conspirator, and the positions of the other alleged members of the conspiracy.

THE COURT: I don't think you need to go on at (3) great length. I have read your memorandum.

Mr. Carroll, my problem is that I have indicated and the Second Circuit has indicated they agree with me that Vesco & Co., Inc. is an alter ego of Vesco. Why shouldn't they participate?

MR. CARROLL: Well, your Honor, I don't believe they have standing to participate in this particular proceeding, as we pointed out in a letter to your Honor.

I think that there has never been any ascertion by the plaintiff here that Vesco & Co. actively participated in the wrongdoings that are set forth in the complaint.

The entire basis for the alter ego theory was based on the Manor Nursing Home case as being the transferee of assets.

At some point in the future—

THE COURT: You may want to reach Vesco & Co., Inc.

MR. CARROLL: The assets of Vesco & Co., Inc., yes, we concede that.

THE COURT: Why shouldn't they be heard?

MR. CARROLL: Just because we have a judgment—

THE COURT: Am I right in this or wrong in this? I think all you are saying is that at this point perhaps technically they have no standing and later on they may at (4) which point I guess they clearly will have standing if you are trying to reach some of their money.

MR. CARROLL: That is right.

THE COURT: We are talking about money now. Why not hear them now instead of later?

MR. CARROLL: Well, your Honor, if I was confident that hearing them now would preclude any issue being raised in the future, then I would have no problem with it, but I am sure when we go after Vesco & Co. stock, if we do—

THE COURT: Preclude what issue?

MR. CARROLL: Any issue that we are entitled to force a judgment that may be obtained here against the stock. I believe—

THE COURT: It seems to me they are conceding that.

MR. ORLOFF: No, we are not, your Honor. I want to make that very clear. We are not conceding that at all.

What we are saying is that—

THE COURT: What you are saying, I take it, is that you don't concede anything, but in the event that it is later

found that you are liable, you would like to be heard now. Isn't that about it?

MR. ORLOFF: No, what I am saying, to be precise, (5) your Honor, is if we are to be found liable later as being the alter ego, because as I understand it, that has been a preliminary finding, if we are to be found liable as being the alter ego, we should not be saddled with a prior damage judgment that we never had an opportunity to defend against.

It really comes back to my argument that the whole thing ought to be put off until a determination is made, not only as to our liability or non-liability, but the other defendants.

THE COURT: Of course, it is a preliminary determination, but I think we are all entitled to assume at this point that it is a little bit more than preliminary.

MR. ORLOFF: Well, I am not impractical—

THE COURT: It does seem to me that your participation in this hearing—I certainly am willing to have you participate and I think perhaps you should—but I think your participation indicates something about your view on the question of whether or not your client is liable.

MR. ORLOFF: If that is the way your Honor construes it, then I don't want to be in that position quite honestly.

THE COURT: I don't see any other point in your being here.

(6) MR. ORLOFF: The point in my being here, your Honor, is that otherwise I am being forced to play a kind of Russian roulette. I am being forced later on to litigate the question as to whether or not—to litigate the filing in plenary fashion whether or not we are an alter ego.

If I lose that question presumably I am then saddled with whatever damages, if any, your Honor finds at this hearing without ever having a chance to be heard on it.

THE COURT: I don't think that is a realistic view of this. I assume that by participation, you want to have the right to cross-examine. I assume that you will cross-examine on matters that you conceive are relevant to your position and if your cross-examining on matters that are relevant, and, of course, you cannot cross-examine on anything else, I just don't follow your train of thought.

If it is relevant, it is because your client may very likely be involved.

MR. ORLOFF: It is because my client fears or is apprehensive or anticipates, in view of what has happened to date in this case, a possible finding by this Court, after hearing all the evidence, as to alter ego, but I should think, your Honor, that by participating at this (7) stage and trying to anticipate we should in no way be held to concede or waive our position in any way, shape or form.

I would be very happy, your Honor—

THE COURT: I can go along with that in terms of a technical reservation that your participation does not for all time foreclose you, but it does seem to me that just as a practical matter, that there is no real reason for you to be here unless you have got a problem.

MR. ORLOFF: Let me once again, your Honor, try to phrase the problem as simply as I can.

THE COURT: I understand how you phrase it. You say we may have a problem and I am fearful that we may, and, therefore, I want to protect my position.

But the point is, it seems to me, that your problem is more than just a speculative problem, in which case you

wouldn't be here at all. It is because you really feel, I think quite properly, that you may very much be involved.

I am not going to say at this point that just because I give you the right to participate that you are inextricably entwined in this proceeding, but I do think you ought to recognize that every question you ask on cross-examination is very likely to inextricably entwine you (8) a little bit more.

You cannot ask a question without showing your interest and if you want to proceed that way, that is fine with me.

MR. ORLOFF: Your Honor, I have to be interested because the plaintiff claims, makes us a co-defendant in this case, and it claims that—Mr. Camhy stood here last week—we quoted from it in our brief—and claims that if he gets a judgment against Robert Vesco, he is going to attempt to execute against Vesco & Co.

MR. CARROLL: That has never been a secret.

MR. ORLOFF: It is not a question of whether it was a secret. If I knew and if I had assurance that down the line at some point Vesco & Co. would have an opportunity to defend itself on all counts, including damages, I wouldn't be here at this point and I have the feeling that this is the only opportunity I am going to have to be heard on damages.

If I am wrong about that, your Honor, then, please, I don't want to be in the position of having to make a Hobson's choice here.

If all they want to do is proceed against Robert Vesco and start all over again against Vesco & Co., that is okay with me, but I don't think that is what they have (9) in mind.

THE COURT: No, I am sure it isn't. I don't think that is what I had in mind. I don't think that is what the Court of Appeals had in mind.

MR. ORLOFF: As I say, I read the Court of Appeals' opinion, in effect affirming your Honor, as saying that on the record then before the Court, we all acknowledge there was no evidentiary hearing. I think an evidentiary hearing will establish that Vesco & Co. is not the alter ego. Maybe that should be held first.

THE COURT: You ask for an adjournment.

What do you want to do during the adjourned period?

MR. ORLOFF: I want to prepare myself more fully to anticipate, combat, analyze and prepare a defense to the evidence that Mr. Carroll is putting in.

THE COURT: I understand that you may need time. Why don't we hear Mr. Corroll's evidence and if you need time, I will give it to you.

MR. ORLOFF: I think I have made enough statements, your Honor, to preserve our position on the record. It is not technical, believe me. I see our position as being one where if we are to defend on damages, we have got to do it now.

THE COURT: I take it your position is that (10) Vesco & Co., Inc. is not only technically separate from Robert L. Vesco, but in fact substanially in substance is different. Is that your point?

MR. ORLOFF: Yes, sir. I think it is a separate entity. I think a full hearing would show it was formed under conditions having nothing to do with what is alleged in this complaint.

THE COURT: I think there may be reasons to believe that you ought to have that full hearing. I would like to proceed this morning and I don't intend to require you to take positions today that you have not thought out and that you are not prepared to take because you have not developed a record.

It seems to me we ought to proceed this morning and certainly I will give you full opportunity to be heard.

I don't mean to suggest—I do mean to suggest, but I don't mean to reach any conclusion that by permitting you to participate at this stage that I have made up my mind in any respect as to the ultimate question of whether or not your client can be subjected to liability.

I would like to indicate, as I have already done, that I think your participation in this hearing may not help your position on that matter.

(11) MR. ORLOFF: Well, I will submit to your Honor now and at the appropriate time whether this becomes an issue that our participation or non-participation should not be legally relevant in any way, shape or form.

THE COURT: I think that is a question we can debate.

MR. ORLOFF: May I respectfully ask your Honor this: I take it your Honor is inclined to agree with the plaintiff's position, as I understand it, that if Vesco & Co. were not to appear here at this point, that there would not be a new damage hearing such we are now holding with respect to Vesco & Co.?

THE COURT: I don't know about that.

MR. CARROLL: Your Honor, let me just comment on that.

Mr. Orloff's entire position appears to be premised on the assumption that he has a right or Vesco & Co. has a right to participate in these damage hearings.

We are seeking a judgment here against Robert L. Vesco, not against Vesco & Co.

After we get a judgment, if we do get a judgment, in a liquidated amount, we will attempt to enforce that judg-

ment against assets held by Vesco & Co. as the assets held by a judgment debtor.

(12) I don't believe Vesco & Co. has any right to participate.

I might note that it is our intention, if Mr. Orloff does participate in this proceeding, to seek a finding from your Honor—if there is an appropriate basis for such a finding—that Mr. Vesco participated in this proceeding through Mr. Orloff, since Mr. Vesco is the only person who would have a right to participate since the default judgment is being sought against him.

THE COURT: That is what I have been trying to say to Mr. Orloff. That if he participates it may be that he prejudices his position that Vesco & Co., Inc. is different from Robert L. Vesco.

I think he understands what I have said. If he wants to participate, I am going to give him the right to participate, not because I am wholly convinced that technically he has an absolute right, but, on the other hand, I think in the interests of fairness, in light of what has been said by a couple of courts already about the relationship between Vesco and Vesco & Co., Inc., that he is entitled to be here.

If he wants to be here and wants to accept the possible consequences, I welcome him.

All right.

(13) MR. ORLOFF: There is no sense repeating. I would only say this, Mr. Carroll's statement that they are seeking a judgment against Robert L. Vesco and not Vesco & Co. points up the very problem and belies what they are saying in the next breath and that is that Vesco & Co. is just the alter ego.

THE COURT: I don't think it does that at all.

MR. ORLOFF: We cited to your Honor cases involving principal surety. I don't suggest Vesco & Co. is a surety, but if the principal is liable, the surety should at least have the right to defend against the principal's liability if the principal is in default.

THE COURT: Mr. Orloff, those cases don't, frankly tell me very much. I don't think that is our problem. I think we have a different question here.

Maybe not wholly different, but I think the problem here is a little different. Frankly, I tried to indicate this in the past and I think I may have, perhaps not clearly enough; my notion is that your client is really a depository for Robert L. Vesco. This is just a notion I have.

Of course, you are entitled to offer proof on this and I will want to hear proof on this. I have a notion that you may have a difficult time.

(14) MR. ORLOFF: Since your Honor has heard no evidence, simply affidavits on that issue at this point, I would respectfully hope and submit that your Honor will approach that with the fullest open view.

THE COURT: Of course I will. Of course I will, Mr. Orloff, but like everybody else, I am influenced by what I have heard before.

MR. ORLOFF: I don't know that your Honor has heard anything before on this particular issue and this particular company.

THE COURT: Yes, I have.

MR. ORLOFF: Other than what was filed by way of affidavit.

THE COURT: At least I have heard that and I have also heard testimony in the SEC case.

MR. ORLOFF: We were not in that case.

THE COURT: Of course you weren't and that is why I am trying to make it as clear as I can that you have a right to be heard on this and present whatever proof and evidence that you wish to do and I assure you I will keep my mind as open as it is possible for a human being to do.

MR. ORLOFF: May I ask your Honor was there evidence in the SEC case as to Vesco & Co., Inc. itself?

(15) THE COURT: There was evidence in the SEC case as to the relationship between Vesco and—what's her name?

MR. CARROLL: Shirley Bailey, the secretary.

THE COURT: Yes. I cannot overlook the fact that she is involved in Vesco & Co., Inc.

MR. ORLOFF: We stipulated that.

THE COURT: Of course, you would have to.

I think all I am doing right now, Mr. Orloff, is talking about procedural, possibly even only evidentiary problems.

I am not going to reach any conclusion this morning, obviously, on whether or not Vesco & Co., Inc. is responsible for whatever judgment is entered against Robert L. Vesco.

All I have been trying to do for the last fifteen minutes is to let you know what my thinking is.

MR. ORLOFF: I think I understood your Honor's thinking from the original findings of fact on the preliminary injunction and I am sure that your Honor will give us an opportunity at such time as you deem it appropriate to present oral and documentary evidence on this issue.

THE COURT: I think it probably ought to be sooner rather than later.

(16) MR. ORLOF: I will await your Honor's decision on that.

THE COURT: Let's talk about that later today when we finish here because it is obviously important.

I will permit Mr. Orloff to participate in this proceeding and this is without any prejudice at all to the right to assert whatever arguments or positions he wants to with respect to his client.

What I have said in the last 15 or 20 minutes was only intended to indicate to both of you what my very tentative thinking is and not to indicate that I have made up my mind.

I will give Mr. Orloff full opportunity to represent his client and to present whatever evidence he feels is appropriate.

MR. CARROLL: Your Honor, just for clarification's sake for the record, I would like to indicate that you did offer at one point to Mr. Orloff the evidentiary hearing that he has been discussing.

THE COURT: I am still offering it.

MR. CARROLL: Yes.

MR. ORLOFF: That was only in connection with the preliminary injunction.

THE COURT: Yes. Let's go ahead, Mr. Carroll.

Notice of Entry of two orders, service by intervenor of amended intervenor complaint and order as to service thereof, dated June 6, 1974.

(754a - 761a)

Notice 755a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al., Defendants.	73 Civ. 2518 (CES) NOTICE OF ENTRY

S I R S :

PLEASE TAKE NOTICE that annexed hereto are copies of two orders which were, respectively, duly filed and entered in the office of the Clerk of the above named Court on May 21, 1974 and May 28, 1974.

Dated: New York, New York
June 6, 1974

Yours, etc.

CARTER, LEDYARD & MILBURN

By: Howard Cockburn
A Member of the Firm

Attorneys for John K. Schemmer,
Receiver
2 Wall Street
New York, New York 10005
(212) 732-3200

TO: ALL COUNSEL ON ANNEXED LIST

David M. Butowsky, Esq.
230 Park Avenue
New York, New York 10017

Shea, Gould, Climenko & Kramer
330 Madison Avenue
New York, New York 10017

Shanley & Fisbe
570 Broad Street
Newark, New Jersey 07102

Hannoch, Weisman, Stern & Besser
744 Broad Street
Newark, New Jersey 07102

Dornbush, Mensch, Mandelstam &
Schwartz
22 East 40th Street
New York, New York 10016

Aranow, Brodsky, Bohlinger, Einhorn
& Dann
469 Fifth Avenue
New York, New York 10017

Sullivan & Cromwell
48 Wall Street
New York, New York 10005

Christy, Frey & Christy
45 Rockefeller Plaza
New York, New York 10020

Wachtell, Lipton, Rosen & Katz
299 Park Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

INTERNATIONAL CONTROLS CORP., 73 Civ. 2518 (CES)

Plaintiff,

-against- ORDER

ROBERT L. VESCO, et al.,

Defendants.

- -x

Upon the affidavit of Bernard Cedarbaum, sworn to May 17, 1974, upon all the pleadings and proceedings heretofore had herein, and pursuant to Rule 4(e) and 4(i) of the Federal Rules of Civil Procedure, it is

ORDERED that a summons and the intervenor complaint of John K. Schemmer, Receiver, shall be served upon defendants Robert L. Vesco, Norman LeBlanc and Richard E. Clay (i) by personal service in the Bahamas by Fred Seymour, Deputy Provost Marshal of the Bahamas, or any other person that may be lawfully designated by Salatiel Thompson, the Provost Marshal of the Bahamas or (ii) by registered mail, return receipt requested, at their respective addresses shown below:

Robert L. Vesco
170 Denville Road
Boonton Township, New Jersey 07005

Robert L. Vesco
Brace Ridge Road
Nassau, New Providence Island
Bahamas

Norman LeBlanc
La Guardia Moravia
San Jose, Costa Rica

Richard E. Clay
Claremont Road
Bernardsville, New Jersey 07924

and that either such service shall be valid service of the summons and intervenor complaint upon said defendants; and it is further

ORDERED that any attorney associated with the firm of Carter, Ledyard & Milburn, attorneys for the receiver, is authorized to serve the papers by registered mail, return receipt requested, as aforesaid; and it is further

ORDERED that a summons and the intervenor complaint of John K. Schemmer, Receiver, shall be served upon defendants Global Holdings Ltd., Global Financial Ltd., Value Capital Ltd., International Bancorp, Bahamas Commonwealth Bank and Columbus Trust Company, Limited (i) in the Bahamas by any method authorized by Bahamian law, such service to be made by Fred Seymour, Deputy Provost Marshal of the Bahamas, or any other person that may be lawfully designated by Salatiel Thompson, the Provost Marshal of the Bahamas, or (ii) by registered mail, return receipt requested, at their respective addresses shown below:

Global Holdings Ltd.
Charlotte House
Shirley Street and Charlotte Street
Nassau, New Providence Island
Bahamas

Global Financial Ltd.
Charlotte House
Shirley Street and Charlotte Street
Nassau, New Providence Island
Bahamas

Value Capital Ltd.
Charlotte House
Shirley Street and Charlotte Street
Nassau, New Providence Island
Bahamas

International Bancorp
Charlotte House
Shirley Street and Charlotte Street
Nassau, New Providence Island
Bahamas

Bahamas Commonwealth Bank
Charlotte House
Shirley Street and Charlotte Street
Nassau, New Providence Island
Bahamas

Columbus Trust Company, Limited
Beaumont House
Bay Street
P.O. Box N3224
Nassau, New Providence Island
Bahamas

and that either such service shall be valid service of the summons and intervenor complaint upon said defendants; and it is further

ORDERED that any attorney associated with the firm of Carter, Ledyard & Milburn, attorneys for the receiver, is authorized to serve the papers by registered mail, return receipt requested, as aforesaid.

Dated: New York, New York
May 21, 1974.

/S/ Charles E. Stewart, Jr.
U.S.D.J.

Notice 760a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al., Defendants.	73 Civ. 2518 (CES) ORDER

Upon the affidavit of Charles E. Hance, sworn to May 24, 1974 and the amended intervenor complaint annexed thereto; and upon all the pleadings and proceedings heretofore had herein; it is

ORDERED that this Court's May 21, 1974 order herein regarding the service of summonses and copies of the intervenor complaint of John K. Schemmer, Receiver, upon certain defendants is hereby modified by substituting therein the receiver's amended intervenor complaint for said receiver's intervenor complaint.

Dated: New York, New York
May 28, 1974

/S/ Charles E. Stewart, Jr.
U. S. D. J.

73 Civ. 2518 (CES)

UNITED STATES DISTRICT CO

~~SOUTHERN DISTRICT OF NEW~~

INTERNATIONAL CONTROLS CO

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

COPY

NOTICE OF ENTRY

CARTER, LEDYARD & MILBU
ATTORNEYS FOR

John K. Schemmer,
Receiver

2 WALL STREET
NEW YORK, N. Y. 10005

761a

Notice

OURT

~~YORK~~

ORP.

RN

Transcript of proceedings before Judge Charles E. Stewart dated July 12, 1974.

(762a - 794a)

BEFORE: HON. CHARLES E. STEWART, JR.,
District Judge.

APPEARANCES:

SHEA GOULD, CLIMENKO & KRAMER, Esqs.,
Attorneys for Plaintiff,
By: DANIEL L. CARROLL, Esq.,
of Counsel.

HANNOCH, WEISMAN, STERN & BESSER, Esqs.,
Attorneys for Vesco & Co., Inc.,
By: LAURENCE B. ORLOFF, Esq.,
of Counsel.

memch

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORPORATION, :

Plaintiff, :

-against- : 73 Civ. 2518

ROBERT L. VESCO, et al., :

Defendants. :

----------x

New York, New York
July 12, 1974 - 10:00 a.m.

MR. ORLOFF: Your Honor, that's all I have at this time with respect to Mr. Ost. I do think that these records that he apparently has in Connecticut bearing upon the payments during that eight-month period are something that I do want to see and examine him on.

THE COURT: I take it that he can produce that fairly promptly; is that correct, Mr. Ost?

THE WITNESS: Yes.

THE COURT: I would think the way to do that -- well, I will leave it up to you. I would suppose that a short affidavit from Mr. Ost would suffice.

Is that agreeable to you, Mr. Orloff?

memch Ost-cross 46

A IOS or Global the ones that we were negotiating the ultimate settlement with.

Q And the remaining 100 hours was utilized by whom?

A By International Controls. This is from evidence that we found in the engine log. The only one who would really know the answer to that question would be Mr. Vesco.

Q In any event, your investigation showed that 1/6th of e hours during 1972 were for the use and benefit of International Controls; is that right?

A From what I can see, yes.

some skepticism about the --

MR. CARROLL: It disturbs me anything is going to be held up pending Mr. Ost's gathering figures which appear to me to be irrelevant.

THE COURT: I understand. I did understand, however, from what Mr. Ost has said that he can probably put this in the mail tomorrow morning.

THE WITNESS: Tomorrow being Saturday, it wouldn't get in the mail until Monday.

THE COURT: All right.

That being the case, let's do it. I am not sure what it's going to lead to. I am not disposed to let

memch Ost- 47

MR. ORLOFF: As long as we would have the right, if we have any question, to send somebody up to his office to look at the records. I don't want to impose upon the Court to have him bring this down here, but --

THE COURT: Yes, of course.

MR. ORLOFF: With that I would certainly agree and it would be acceptable.

MR. CARROLL: Your Honor, I don't understand what the figures for the eight-month period have to do with this hearing.

THE COURT: I don't, either, Mr. Carroll.

As I have already expressed, I have expressed

this any further.

I will expect you to put this in the mail Monday morning, Mr. Ost.

MR. CARROLL: What exactly are we putting in the mail, I wanted to ask?

THE COURT: As I understood it, it was figures for the eight-month period which, as I understand it, Mr. Ost, you have in a book somewhere which you can produce.

THE WITNESS: Are we looking strictly for numbers and not supporting invoices?

MR. ORLOFF: Yes.

THE WITNESS: We have an analysis similar to this which will cover it. It's going to be the similar type

memch Ost 48

it lead to anything which would be time-consuming or irrelevant.

MR. CARROLL: My only concern is any delay at all in getting a judgment here, if your Honor determines we are entitled to judgment, is working to the detriment of ICC because of the substantial expenses being incurred. I think before Mr. Ost should be put to any task of doing this, Mr. Orloff should explain what the relevance is to these proceedings of --

MR. ORLOFF: I think I have.

THE COURT: I don't think we need to discuss

THE WITNESS: And it will be for the period -- actually, it will only be for the period October 1971 on, because that was really the time we entered into the lease and that's the time we started paying to third parties, those expenses.

MR. ORLOFF: I am only interested, just so we are clear, in any and all payments to Skyways and to third parties from the beginning of this plane as an ICC-Skyways event, up to the time when Skyways was no longer a captive of ICC. Whatever that time frame is -- I have accepted your statement for today's purposes -- that is the time period I would like the figures on.

THE COURT: Well, I think we ought to be a little

memch Ost 49

thing, summary and numbers.

THE COURT: Is that what you have in mind, Mr. Orloff?

MR. ORLOFF: Yes.

THE WITNESS: Just dollar amounts. You are not concerned about supporting documents?

MR. ORLOFF: I am concerned you break it down between the actual expenditures to third parties.

THE WITNESS: It will be in a fashion similar to what's in 4-A.

MR. ORLOFF: That's all right.

memch Ost 50

bit more precise than that.

I thought we were talking about an eight-month period.

MR. ORLOFF: I believe Mr. Ost said he thought it was an eight-month period, and I have no reason to doubt that.

THE COURT: We understand now. All right.

All right.

MR. CARROLL: I have a few questions, if your Honor please.

(Recess.)

Controls was made first to clear up or pay the G & A account and the legal account, and the remainder to clear up the travel account, or to make a deduction from the travel account.

Was that the allocation that was made initially when the payment was received from IOS or the other foreign entities?

A That is correct.

Q Is this an allocation where the books and records of ICC changed to reflect any other allocation or specifically the allocation reflected in that Telex?

A No, they were not.

Q Exhibit 2 reflects three different accounts, is

memch Ost-redirect 51

R O B E R T S T E P H E N O S T,

resumed.

REDIRECT EXAMINATION

BY MR. CARROLL:

Q Mr. Ost, on cross-examination Mr. Orloff was asking you about the Exhibit 2 which is annexed to the affidavit of May 7, 1973, which was submitted in the SEC proceeding, and the allocation on that exhibit of the $1,250,000 payment to the 707 or travel account.

Now, I believe you testified that the allocation as reflected on the books and records of International

A Yes, they did.

Q And did, during that period, International Controls pay an amount of $405,628.81 for legal expenses incurred in connection with IOS and these other foreign entities?

A Yes, they did.

Q Now, with respect to the period prior to January 1, 1972, was Skyways Leasing Corporation a wholly-owned subsidiary of International Controls, or a subsidiary of a subsidiary of International Controls, prior to January 1, '72?

A Yes, sir.

that correct, exhibit 2 on the May 7th affidavit; G & A, legal, and travel?

A That's correct.

Q And what period do the various entries shown on this exhibit cover?

A The period January 1, 1972 -- excuse me, '71, through the end of December 1972. January.

Q During that period, did International Controls actually pay an amount of $247,214.41 in connection with general administrative and entertainment expenses that were on account of activities of their employees for IOS or other foreign entities?

THE WITNESS: No, I can't, your Honor. These were designations that were noted on the invoices from Hogan & Hartson.

THE COURT: Do you know what they are, Mr. Carroll?

MR. CARROLL: Your Honor, the King-Colorado litigation, I believe, had something to do with King resources initially going into IOS, although I don't know further about it. I believe King initially owed IOS some money, or was negotiating for money.

Canadian lawsuits, I believe that may have been IOS proxy lawsuits.

THE COURT: With IPI or --?

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Q Did International Controls make payments with respect to the Boeing 707 prior to January 1, '72?

A It did.

THE COURT: Mr. Ost --

If I may interrupt, Mr. Carroll.

-- would you look at Exhibit 1 to your affidavit?

THE WITNESS: The May 7th affidavit?

THE COURT: Yes. It talks about legal fees and there are five matters mentioned, SEC matters. Can you tell me what they are?

Q And were such payments made to Skyways Leasing?

A Yes, they were.

Q And what were those payments for?

A The payments were made to Skyways for rent, engine hours, in accordance with the lease that ICC and Skyways entered into on October 1, 1971.

Q And was ICC reimbursed for the payments made to Skyways for rent?

A Yes, they were.

Q By whom?

A They were reimbursed by IOS during 1972.

Q Now, what other payments were made prior to January 1, 1972 in respect of this Boeing 707?

memch Ost-redirect 54

MR. CARROLL: No, I think it was the IOS proxy fights, Canadian litigations commenced up there.

THE COURT: What is Tucker?

MR.CARROLL: Tucker criminal. I have no idea.

THE COURT: I am curious. I don't think it has any relevance. I am just curious.

MR. CARROLL: I don't know anything about it.

THE COURT: Do you know anything about it, Mr. Orloff?

MR. ORLOFF: No, sir.

THE COURT: All right. I'm sorry. Go ahead.

A That's correct.

Q And that is the only period involved in the schedule you prepared and which has been marked as Exhibits 4-A and 5-A?

A That's correct.

Q Now, during the period subsequent to January 1, 1972, were payments made to Skyways for rent under the lease?

A Yes.

Q And do you recall when the dividend in kind, whereby Skyways was spun off,to the shareholders of ICC occurred?

A It occurred in February 1972.

A Made other payments to the pilot and the crew for their salaries and expenses and to third parties for gas and oil and operating expenses.

Q Was ICC reimbursed for those payments that you referred to?

A Yes, they were.

Q By whom?

A By IOS.

Q So, is it correct that the only payments which ICC made and was not reimbursed for was for the period subsequent to January 1, 1972?

A Yes, it was.

Q And was ICC reimbursed for that amount?

A No, they weren't. Well, it depends how you apply the cash received, but in the net, no.

THE COURT: In the net, no?

THE WITNESS: It depends how you apply the cash that it was paid on account, the $522,000; if you apply it to January and February, then it was paid.

THE COURT: Well, it was paid?

THE WITNESS: No, I -- maybe I missed the question.

Q Was ICC reimbursed, is my question, and Mr. Ost,

Q Can you pin that date down any better?

A If I recall correctly, my affidavit said the stockholders of record as of November 7th. I think that was in the affidavit.

Q So, the only payment that would have been made to Skyways after January 1, '72, while it was a subsidiary, or a subsidiary of a subsidiary of ICC, was the January rent payment and the reserve for engine overhaul?

A That's correct.

Q And was that payment actually made by ICC to Skyways?

THE COURT: Well, I think I am missing the point.

You got paid, didn't you, finally?

THE WITNESS: Not for 1972's rent or engine hour reserves. We did for 1971.

THE COURT: Well, let me put it this way:

Does somebody still owe you some money?

THE WITNESS: Sure do.

THE COURT: How much?

THE WITNESS: According to our records, the 707 operating expense, we are owed $1,444,604.83. We have that still recorded as a receivable in the company records.

THE COURT: Thank you.

MR. CARROLL: Your Honor, at this time, once

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you said --

THE COURT: I take it you were?

THE WITNESS: Well, if we are talking of the rent that was disbursed, or in January, February, March, April and May, for the rent and engine hour reserves, it depends how you allocate the cash received.

MR. ORLOFF: You didn't receive any money for those months until December '7[illegible] is that correct?

THE WITNESS: Yes.

MR. ORLOFF: I think, your Honor, it depends how you apply the monies received ten months later.

and meanwhile ICC is paying out $200 a day.

THE COURT: We will get the figures Monday morning.

MR. CARROLL: We will, but if Mr. Orloff decides he wants to cross-examine --

THE COURT: We won't have any more debate about irrelevant matters. I am inclined to agree with Mr. Carroll, Mr. Orloff. Do we really need to get these figures? I don't quite understand at this point why I am going to be interested in seeing them other than just curiosity.

MR. ORLOFF: No, I think it's more than curiosity, your Honor. Let me try to make clear what I want to

again, on Mr. Orloff's request for these documents, I don't see how anything shown in these documents can at all affect the amount of the judgment that ICC is entitled to receive here.

THE COURT: Frankly, Mr. Carroll, I agree with you. I don't see that it's going to help us very much.

MR. CARROLL: Your Honor, my concern is that this has been delayed from time to time and that Mr. Ost will give Mr. Orloff these new figures, Mr. Orloff says, "We have to examine Mr. Ost about it," and we are going to be delayed for another couple of months,

The only figure involved would be the rent; is that correct, Mr. Ost?

THE WITNESS: Should be the only figure that I can think of, the rent and the reserve for engine hours.

THE COURT: All right.

I think what we will do is, I will expect, Mr. Ost, that you will send me these figures the first thing Monday morning. I will not expect, unless I am persuaded to the contrary, which is unlikely, that there will be any further debate about these figures. We will receive the figures and put them in the record, and they will be there for the record.

MR. ORLOFF: I assume I will have a chance to at

establish. I think the records will show that IOS paid to ICC monies that were applied to 1971 charges that were over and above the actual monies expended by ICC to third parties in connection with this claim, and it seems to me the difference between what ICC actually had to pay out to third parties and what they received from IOS should be credited against any amount, if any, that your Honor finds by way of judgment here.

That,plainly and simply, is my purpose.

MR. CARROLL: Your Honor, I think Mr. Ost can say what that figure is. I don't see its relevance.

see what we get Monday morning.

I, frankly, am skeptical of the desirability or the usefulness of going ahead with this, but I will, of course, give you the opportunity to argue.

Now, what else have we got?

MR. CARROLL: Your Honor, that's all I have at this time.

I respectfully move for the entry of judgment in the amount proven.

I had offered the exhibits and you had reserved decision on them, based on Mr. Orloff's statement. I am reoffering all the exhibits.

THE COURT: Yes. They are received.

memch Ost-redirect 60

least argue from them, your Honor.

THE COURT: Well, you have had that chance, Mr. Orloff.

MR. ORLOFF: How, your Honor? Most respectfully, Mr. Ost is --

THE COURT: What you are saying is that you can't argue unless you have the figures.

MR. ORLOFF: I can argue the legal principle, but I can't translate it into numbers without having the numbers.

THE COURT: Yes. All right. Let's wait and

Vesco & Co.'s potential vulnerability for any judgment against Robert Vesco, and by virtue of the fact that there has been a conspiracy alleged among a number of defendants, who have not had a chance to defend themselves as yet, on this issue, no judgment should be entered until that defense is put in.

THE COURT: I have these thoughts about it:

It seems to me that in terms of the dollars, Mr. Carroll has told us what they are, and my notion is that this is reasonably clear.

On the other hand, what you say about the merits concerns me. I think I am obligated to give you a hearing on the question of conspiracy and on the merits. I'd like

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(Plaintiff's Exhibits Nos. 1 through 111 for identification were received in evidence.)

MR. ORLOFF: Your Honor, I should have an opportunity to put some evidence before the Court also, and I would most respectfully say that I should have the opportunity to put forth evidence, not only as to the dollar figure of any damage award, but also as to the liability issue.

I realize that the plaintiff has taken a contrary position in its memorandum, but, as we suggested to your Honor in our memorandum, both from the standpoint of

Does that seem appropriate to you, Mr. Carroll?

MR. CARROLL: Yes, I am prepared to submit judgment.

THE COURT: I think you would submit the order, of course, to Mr. Orloff, but it does seem to me, Mr. Orloff, that on the figures, the dollars we don't have much to argue about.

On the merits, I think perhaps we do.

MR. ORLOFF: May I be heard on the figures for a moment?

It seems to me, your Honor, a substantial question has been raised in my examination of Mr. Ost, my cross-

to do it promptly. What's your notion on it?

MR. ORLOFF: Within some reasonable time period, your Honor. I don't mean months, but I am talking certainly about several weeks. I would be ready on that.

I would say this to your Honor in terms of the numbers. I don't know what your Honor's inclinations are or whether you have formed an opinion as to the actual dollar amounts --

THE COURT: No, I have not formed a precise opinion. I had in mind that I was going to ask Mr. Carroll to submit an order which would deal with the figures.

Now, I don't know what Mr. Beatty's testimony would be, but it strikes me that at least we ought to make an effort to get him in to testify on this subject, because he would have something to say, obviously, as to this.

Obviously, if your Honor will accept the allocation made in that Telex, then I am content, and I don't want to get into that area any further. But I assume Mr. Carroll's position is that that Telex is meaningless, and it was attached to an affidavit filed with this Court, the numbers set forth were in the affidavit, and it was attached as an exhibit presumably to back up the numbers in the affidavit, and it seems to me either it's given credence or if it's now

memch Ost 63

examination, as to the manner in which receipts from IOS were allocated. And it is my understanding, and I don't mean to sum up at this point -- I am sure your Honor will give me a chance to do it in another way -- but it does seem to me a substantial question is raised as to whether or not ICC, through the direction of its officer, Mr. Beatty, at least, and this is Mr. Ost's testimony, did not reallocate, or allocate, if you will, in May of '73 that entire amount for the Boeing 707 account which changes the dollars sought here substantially. It changes it by almost a million dollars.

records. He further testified the initial allocation was done according to the instructions of Mr. LeBlanc.

THE COURT: As I have indicated, I have a tentative view. I am going to hear Mr. Orloff, whatever you want to tell me, but it does seem to me that we have come pretty close to the end of fruitful discussion about figures.

Now, on the merits, that's something different.

MR. CARROLL: Your Honor, on the question of the merits, I don't think I understand exactly what Mr. Orloff is asking for and I don't know that your Honor did.

going to be run away from, so to speak, I should certainly have the opportunity to try to bring in other witnesses to confirm that, in fact, that is the way the amount should be allocated, and we are talking about a million-dollar difference there.

MR. CARROLL: Your Honor, on that point, Mr. Ost has been perfectly clear here that the allocation was made initially on ICC's books and records as shown on the exhibits offered in this proceeding, and that the allocation as reflected in this Telex, that was an exhibit to his SEC affidavit, was done merely for the purpose of negotiations, it was not a reflection of ICC's books and

MR. ORLOFF: Yes. I am not sure I frankly comprehend the distinction your Honor is now making between that and the merits. Maybe I can put it another way by referring back to the complaint in this case.

THE COURT: I am talking about the merits in this matter.

MR. ORLOFF: Yes, the merits of this matter.

THE COURT: Mr. Ost, you don't have to sit on the witness stand any longer. You are excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. ORLOFF: The point I am making, your Honor, just to clarify it: There are eleven counts in the com-

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I believe Mr. Orloff was asking for a full hearing on the question of Mr. Vesco's liability under the complaint, and I think our memorandum of law shows that Mr. Vesco would not be entitled to that, were he here.

THE COURT: No, I don't understand Mr. Orloff to -- well, if that's what he means, he is not going to get that kind of a hearing. I understood that what he was interested in was a hearing on the merits of whether or not the charges with respect to the airplane are appropriate.

Isn't that what you have in mind, or what is it that you have in mind?

Now, if those were the defendants against whom Mr. Carroll was seeking judgment, I wouldn't be here defending. As I understand it from his memorandum, what he is trying to show in other counts of the complaint is conspiracy has been charged in which various persons have somehow conspired in such a way that, among others, Robert Vesco -- and we say that appears to follow from your Honor's temporary ruling, preliminary ruling, that that might include Vesco & Co. -- as a result of that conspiracy, somehow Robert Vesco is personally liable for these charges which are admittedly IOS obligations, and it's in that area that I would want to defend on and put in proof on, because it seems to me it's a long jump from

memch 66

plaint in this case. The only count that seeks a liquidated sum with reference to the airplane, and it seeks essentially the same sum that Mr. Ost has testified to, is Count 10.

In Count 10 -- and damages are sought in that liquidated amount in Count 10 -- Count 10 seeks relief against IOS, Kilmore Investments, Global Holdings and Global Financial, for failing and refusing to pay the balance due to ICC, and the amount is quite clearly -- have to do with the amounts Mr. Ost has been testifying to.

a book account obligation from IOS to ICC and translating that into a personal liability of Robert Vesco for that same amount of money, and that's in essence what they are trying to do here, and they are doing it on the theory of a conspiracy --

THE COURT: Well, what do you visualize, Mr. Orloff, that you would like to do? I don't mean -- I don't want you to tell me in detail.

Are you going to put on witnesses? Are you going to have documents? What are you going to do?

MR. ORLOFF: My primary goal would be, but it may not be practical that I can convince your Honor, to convince your Honor that Vesco & Co.is separate and

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taking a book account between ICC and IOS and translating that into a personal obligation of Mr. Vesco -- and let me repeat again, my only reason --

THE COURT: Have you got a copy of the complaint there?

MR. ORLOFF: Yes, sir. If your Honor doesn't mind, it's in the Second Circuit Appendix I have.

MR. CARROLL: I have the file copy, your Honor (handing).

THE COURT: Yes. Are you finished?

MR. ORLOFF: Well, I am saying it's a long jump from taking

your Honor is indicating your inclination to rule that way.

THE COURT: I could be wrong about that, and perhaps you should have a chance to show me I am wrong.

MR. ORLOFF: I would like that chance.

Secondly, I think I should have the opportunity to show that, in fact, the whole notion, the whole factual theory that somehow would lead to the conclusion that Robert Vesco is liable for this money personally is simply incorrect, and it's incorrect, quite honestly, largely on the basis of documents that exist as a matter of public record.

THE COURT: Well, it's the second part of that

independent, and if you were to enter a judgment against Robert Vesco, it shouldn't affect Vesco & Co., and if you did that, I could stop at that point.

The problem I have had, and I think I said that the first time I came in on that proceeding, is that I have the feeling that your Honor, at least tentatively, is inclined otherwise, and you are inclined to saddle Vesco & Co. with any judgment entered against Robert Vesco.

THE COURT: You are correct.

MR. ORLOFF: While I disagree with it, I appreciate

MR. ORLOFF: It makes a difference, as I read the complaint, in terms of whether there was some sort of a conspiracy that would cause Mr. Vesco to be personally liable.

THE COURT: I think the fact of that approval doesn't really -- it seems to me that's a completely irrelevant problem.

MR. ORLOFF: The plaintiff doesn't seem to think so, your Honor, in its theory.

I mean, I would like to understand this theory. I don't know whether your Honor does. The theory makes Mr. Vesco liable where there were agreements in effect between IOS and ICC regarding reimbursement for this

that bothers me. It seems to me I have dealt with that problem.

MR. ORLOFF: I don't know that your Honor has. For example, and I say this only by way of example, one of the underpinnings for their cause of action is that the lease between ICC and Skyways was never approved by the ICC board of directors. Yet Mr. Beatty filed an affidavit with this Court in the SEC case in which he --

THE COURT: I don't think whether it was approved or not approved makes much difference.

MR. CARROLL: It's not an issue here.

monies expended in connection with it, that it was part of a fraud in violation of the '34 Act, and all these expenses flowed from that violation. And it's all set forth in our memorandum of law, the various provisions, the various paragraphs of the complaint.

I don't know what Mr. Orloff's concern as to whether Mr. Vesco is liable or not. Mr. Orloff does not represent Mr. Vesco. Mr. Orloff represents Vesco & Co. When the times comes that we attempt to enforce a judgment against Vesco & Co., that's the time for Mr. Orloff to come in for his hearing on the merits whether or not Vesco & Co. is in fact an alter ego of Mr. Vesco; not at this time.

memch 70

airplane. You have got two corporate entities who enter into agreements and, in fact, as has been testified to, over some period of time, IOS reimbursed ICC.

Now,we have them coming in saying that Mr. Vesco is personally responsible for the balance.

MR. CARROLL: Your Honor, the theory is explained very well in your complaint, and a number of different theories.

Number one, the complaint alleges that the entire IOS transaction was a corporate waste perpetrated by Mr. Vesco on ICC and he is responsible for all monies expended in connection with it, that it was part

for a hearing on the merits?

THE COURT: I understand the chances of collecting from Vesco & Co., Inc., are better that collecting from Robert L. Vesco, but that's something you have to decide.

Mr. Orloff, what were you going to say?

MR. ORLOFF: I was going to ask of Mr. Carroll through the Court whether I am therefore assured, and I guess I must respectfully ask the Court, too, that if a judgment were to be entered against Robert L. Vesco alone, would Vesco & Co. have an opportunity at a later date to be heard fully on the merits?

THE COURT: I have just been told by Mr. Carroll he doesn't want a judgment against Vesco & Co., Inc.

We are asking for a judgment against Mr. Vesco. Then, under the Huss case, liability is established.

THE COURT: That's not an entirely accurate statement, Mr. Carroll. The judgment you are looking for is also against Vesco & Co.

Do you want me to enter a judgment against Vesco & Co., Inc.?

MR. CARROLL: We are not asking for a judgment against Vesco & Co., Inc. All we are asking for is a judgment against Robert Vesco.

MR. ORLOFF: Will I have a full opportunity

send out this statement.

THE COURT: Oh, yes. Let's see, how did we leave that? We have been back and forth on that.

MR.CARROLL: Mr. Ost will send me the figures, which I will have Monday or early next week, and I will transmit them to your Honor and Mr. Orloff.

THE COURT: It does seem to me that, although I am requiring this, that it's not going to mean very much.

I will expect to get from your, Mr. Carroll, an order in the course of the next three or four days, which will have been submitted to Mr. Orloff.

MR. ORLOFF: Would you be good enough to send it to me?

72 memch 72

MR. ORLOFF: I think he is going to come in for one later on, and I want to make sure I will get my full hearing.

THE COURT: Of course you will.

This is interesting. Now I wonder what we need to do, if anything, from here on?

MR. CARROLL: I don't think there is anything to do.

THE COURT: You send me an order, and,of course, Mr. Orloff gets a chance to look at it.

MR. ORLOFF: I thought Mr. Ost was going to

MR. ORLOFF: Your Honor, may I say two things? Number one, in view of the statement that Mr. Carroll made a few minutes ago, I am not sure why I am here at this point, but I understood him to say that he is not seeking judgment against --

THE COURT: You don't represent Mr. Vesco?

MR. ORLOFF: No, I don't.

When I came in originally, I thought I made it clear I was here only because I was fearful any judgment against Mr. Vesco would be transformed into a judgment against Vesco & Co. without Vesco & Co. having an opportunity to defend itself on all merits. If I have that opportunity, I don't think I should have any further

MR. CARROLL: I have a judgment prepared now that I can give Mr. Orloff a copy of, that we are asking your Honor to enter.

THE COURT: Can we deal with it right now? Mr. Orloff is here. Has he seen it?

MR. ORLOFF: Not yet.

MR. CARROLL: Your Honor, the total amount reflected in the judgment is the sum, one, of the $1,844,000 shown on Exhibit 5-A, as well as the $343,750 advanced to Skyways by ICC in connection with the purchase of the Boeing 707.

THE COURT: What figure do I put in the first ordering paragraph?

MR. CARROLL: The blank space would be the total figure for interest at 6 percent is $2,422,466.72.

THE COURT: All right.

It does seem to me, Mr. Orloff, that you needed to be here this morning. I am not sure exactly where we are with respect to your client. I take it that at the moment no relief is being asked with respect to your client, and we will just leave it at that.

Is that correct, Mr.Carroll?

MR. CARROLL: Your Honor, Vesco & Co. has filed an answer to the complaint. We can't get a default judgment

memch 74

comment.

THE COURT: I am sure we have had an interesting morning. I am not sure about what.

MR. CARROLL: We have been through this.

THE COURT: I know, Mr. Carroll. I am being slightly facetious.

Who does represent Vesco, as far as you know, in this matter?

MR. CARROLL: No one, your Honor, because Mr. Vesco defaulted. He never answered the complaint. We have entered a default judgment.

and I say that most respectfully. I understood Lee's position to be different until Mr. Carroll's remarks a few moments ago.

THE COURT: All right, I guess we are all set. Are we?

MR. CARROLL: Yes. I assume Mr. Orloff and -- I assume you don't want Mr. Ost's figures any more on these expenses?

MR. ORLOFF: I am always interested in them, but the Court's ruling indicates I don't get them, so I am not going to press it.

THE COURT: I'm sorry. What are you saying?

MR. ORLOFF: I thought your Honor had previously

memch 75

against Vesco & Co.

MR. ORLOFF: I was here now and on the last two occasions, because, as far as I was concerned, it was never made totally clear to me until just a few moments ago that we were going to get a full opportunity to be heard on all aspects before any effort was made to enter a judgment against us, and that's why, when I heard that, I have now backed off participating any further.

THE COURT: You should have known that you would have that opportunity from me.

MR. ORLOFF: It wasn't a question of the Court,

Monday morning is no longer necessary.

- - -

indicated you were satisfied to enter the judgment now without having these figures submitted.

THE COURT: No, I didn't mean to indicate that at all. I thought that we would still get the figures from Mr. Ost.

MR. CARROLL: I will be happy to supply the figures.

THE COURT: I understood that was going to be done. I am not sure what we are going to do with them.

(Recess.)

THE COURT: With the consent of counsel, it is directed that the data which Mr. Ost was supposed to send

Judgment against Robert L. Vesco, dated July 12, 1974a.

(795a - 797a)

amount of $2,188,354.93; it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiff recover of defendant Robert L. Vesco the sum of $2,188,354.93, plus interest on said sum at the rate of 6% from March 1, 1973, or a total of $2,422,466.72 and that plaintiff have execution therefor; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to prove such additional loss, damage, cost and expense it has suffered by reason of the acts alleged in the complaint, the amount of such additional loss, damage, cost and expense to be determined by the Court upon an additional hearing or hearings to be held as provided for in said October 5, 1973 judgment.

Dated: New York, New York
July 12, 1974

Charles E. Stewart Jr.
U.S.D.J.

JUDGMENT ENTERED - 9/16/74
Raymond F. Burghardt
CLERK

Judgement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., : Civ. Action No. 73 Civ. 2518 (CES)

Plaintiff, :

-against- : JUDGMENT #74,584

ROBERT L. VESCO, et al.,

Defendants :

U.S. DISTRICT COURT FILED JUL 12 1974 S.D. OF N.Y.

A judgment having been entered herein against Robert L. Vesco on October 5, 1973;

AND this cause having been brought on for partial inquest before the Court on May 14 and 22, 1974 and July 12, 1974, after the required notice was given to defendant Robert L. Vesco, and plaintiff having offered proof establishing damages in the

INDEX NO. 73 Civ. 2518 (CES)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YOR

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

- against -

ROBERT L. VESCO, et al.,

Defendants.

JUDGMENT

SHEA GOULD CLIMENKO & KRAM

330 MADISON AVENUE

NEW YORK, N. Y. 10017

MO 1-3200

ATTORNEYS FOR Plaintiff

RK

MER

(798a - 812a)

Transcript of Proceedings before Judge Charles E. Stewart dated October 2, 1974 in International Controls Corp. v. Robert Vesco (73 Civ. 1588).

New York, October 2, 1974,
4:30 p.m.

APPEARANCES:

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.,
Attorneys for plaintiff;
Sheldon D.Camhy, Esq., and
Lois Sylor Yohonn, Esq., of Counsel

HANNOCH, WEISMAN, STERN & BESSER, ESQS.,
Attorneys for defendant Vesco
& Co., Inc.
Laurence Orloff, Esq., of Counsel

-- - -

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

vs. : 74 Civ. 1588

ROBERT VESCO, VESCO & CO., INC., :

Defendant. :

----------x

Before:

HON. CHARLES E. STEWART, JR.,

District Judge.

size to the court an argument that I made, I believe, in another context in a related case when I sought on behalf of Vesco and Co. to participate, as your Honor may recall, on the damage hearing in the other ICC case against some 30 defendants.

The fact of the matter is in this case that based upon some preliminary findings by your Honor in the companion case, based upon statements made on behalf of ICC in that companion proceeding which simply can't be ignored, and based upon the, at best, ambiguous statements by ICC in their brief in connection with this motion, it appears to be a serious possibility, if not probability, that ICC is going to take the posi-

jqa 2

THE COURT: I want to apologize for keeping you waiting.

MR. ORLOFF: Your Honor, this is a motion by Vesco & Co. to intervene in the pending action that was filed some time in April I believe of this year by International Controls against Robert Vesco and Robert Vesco only. The basis for the motion as set forth in our moving papers, to which is attached a copy of the answer we will propose to file, is explained I think quite adequately in our brief but I simply wanted to add a couple of additional points to that and to empha-

MR. ORLOFF: Given all that and given the court's inclination -- and I believe your Honor and I have had colloquy on this in the other case and your Honor says, as I recall it, that your inclination there, you were open to be persuaded by evidence, but we haven't reached that point in any hearing. Given the ambiguous position taken by ICC --

THE COURT: What is ambiguous about their position?

MR. ORLOFF: What is ambiguous about their position, it seems to me, your Honor, in their brief in this case, is their statements that while it is a logical possibility -- and I am quoting from them --

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tion that Vesco & Co., as your Honor has preliminarily ruled, is in fact the alter ego of Robert Vesco, is in fact Robert Vesco --

THE COURT: The Court of Appeals said so too.

MR. ORLOFF: The Court of Appeals affirmed your Honor's preliminary findings which were made, as I am sure your Honor recalls, on the basis of an application for preliminary relief and not with any plenary hearing

THE COURT: That is right.

of your papers.

MR. ORLOFF: I don't think so. If your Honor will point it out to me I will respond.

THE COURT: I want you to look at page 7 of your reply memorandum.

Do you have page 7?

MR. ORLOFF: Yes, sir.

THE COURT: The first full sewntence says:

"Unless plaintiff can somehow," and so on, "it is difficult to understand why this litigation cannot be defended by Mr. Vesco's representatives."

Then the last sentence of your memorandum at the bottom of page 8, you say, and I am not quoting

jaa 4

that they may attempt to go after Vesco & Co. to satisfy a judgment here, they don't know whether or not this will prove to be so, and they say that the fact that that may happen should in any way give Vesco and Co. the opportunity to attempt to defend itself against that eventuality. I suggest to your Honor --

THE COURT: Are you saying that in light of what I said in this other matter that you really represent Robert L. Vesco?

MR. ORLOFF: No, sir.

THE COURT: You seem to say that in some

MR. ORLOFF: We do not represent Robert L. Vesco. We represent Vesco & Co. If it is made clear that Vesco & Co. is at least at this point a separate, independent entity, in no way to be deemed at this point the alter ego of Robert Vesco, that in the event any action is brought against Vesco & Co. on this cause of action in any way that Vesco & Co. will have the full opportunity to defend itself on the merits of the claim and on the amount of damages, then I would not be here. But I don't think ICC has taken that position in fairness.

THE COURT: I think they have taken an entirely appropriate position that in light of what

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the entire sentence, "but I say Vesco & Co. is entitled to intervene not only to contest the issue of damages but the purported liability of defendant Robert L. Vesco as well."

I am confused. Do you purport to represent Robert L. Vesco in this matter?

MR. ORLOFF: No, sir. If I may, let me try to explain. The quote on page 7, your Honor, must be taken in context with the proceeding sentences.

THE COURT: Let's leave out the semantics. I take it you do not represent Vesco?

we want to be present in this lawsuit so that if things happen we can do something."

Nothing has happened yet, it seems to me, which prejudices you if your only client is Vesco & Co., Inc.

MR. ORLOFF: What prejudices us is plainly and simply the position taken by ICC quite consistently in the other case, and reflected in your Honor's ruling that Robert L. Vesco, in your Honor's preliminary findings, will somehow be transformed into Vesco & Co. for the purpose of collecting from Vesco & Co.'s assets on a judgment against Robert L. Vesco.

THE COURT: That is a possibility.

jqa 6

has happened, that maybe your client is Vesco and maybe it isn't. It seems to me, Mr. Orloff, that you are in this position:

To intervene you have to show an interest. You can show an interest, if you so desire, by indicating that you represent Robert L. Vesco in addition to Vesco & Co., Inc. Obviously, that would constitute an interest. Short of that, it seems to me your position -- you say they have been ambiguous; it seems to me you are being ambiguous. You are saying that "We don't represent Robert L. Vesco but, on the other hand,

MR. ORLOFF: May I make an additional point?

THE COURT: I was going to suggest that I know your points. Have you got something new that I haven't read?

MR. ORLOFF: I think so.

I think, your Honor, that to simply permit -- and I am speaking from the standpoint primarily of representing Vesco & Co., but I think this should also be said -- to permit a complaint of this sort, which is on its face defective, which fails to state a cause of action, to result in a judgment which can be the basis for going against the assets of our client is just

jqa 7

What I am suggesting to the court is that it seems to me in fairness to Vesco & Co., which is at least de facto a separate, independent entity, it is an existing corporation, it is not Robert L. Vesco, also known as, it was formed, it exists, it is a viable entity, that entity should have the right to protect itself.

THE COURT: I think it will have the right to protect itself in the event we reach that point. Right now we are not at that point. I don't mean to cut you off. I have read your papers and I think I know this matter fully,and it is late in the day.

is stated, but I am open to argument on that.

But, in any event, if I am wrong on that, if no cause of action is stated and I think there is, your client is not going to get into trouble because there are other people in this courthouse who will straighten me out.

MR. ORLOFF: The problem I have at the moment, your Honor --

THE COURT: So that it seems to me the question you are raising is in all respects premature.

MR. ORLOFF: If my client, Vesco & Co., has the right to challenge the existence of the cause of action at some point in time, if that is what your

jqa 8

patently unfair. There is no cause of action in this complaint.

THE COURT: I would agree weith that entirely. If there is no cause of action stated here, then nothing can be done to you.

MR. ORLOFF: As long as we have the opportunity to raise that at the appropriate time.

THE COURT: At the moment, Mr. Orloff, I don't know because I haven't been fully made aware of the pros and cons, whether or not a cause of action is stated. I happen to think a cause of action

then I am satisfied.

THE COURT: Of course, that is not to be the case.

MR. ORLOFF: Your Honor, I certainly don't presume to take the court's time, particularly late in the day, to argue things that are academic. I suggest to your Honor the plaintiff's brief was ambiguous as to what position the plaintiff would take. I think your Honor's statement clears up that ambiguity.

THE COURT: Let me hear from Mr. Camby.

MR. CAMBY: Your Honor, the complaint in this action asserts that one Robert Vesco, while a fiduciary of a corporation, appropriated to himself a

jqa 9

Honor means by premature, then I can see an accept your Honor's point. At the moment there is nobody raising that point. There is nobody pointing out to the court that there is no claim here really of corporate opportunity.

THE COURT: Of course, the question will be presented to you if and when somebody comes after your client to try to get some of your assets, and then you will have full opportunity to litigate everything.

MR. ORLOFF: If that is the position,

but let's face it, we claim they hold assets of his. They claim they are not his assets. They claim they are his children's assets, that is, they are the trustees of certain trusts that are the stockholders of Vesco & Company.

Without rehearsing everything that went on in Mr. Orloff's argument, I think it is pretty simple to say that a person who holds property of a defendant in an in persona action has no standing to raise substantive defenses for that defendant.

THE COURT: The question that bothers me and which I was trying to put to Mr. Orloff, suppose I permit him to intervene, I take it he will intervene

jqa 10

corporate opportunity and profited from it by misleading the board of directors of a corporation as to how he intended to conduct himself with respect to that corporate opportunity. It says that he personally derived 1-1/2 million dollars from that transaction and and that another 1-1/2 million dollars was taken by others because of the way he conducted himself.

The person named in that complaint is Robert Vesco. Vesco & Co. holds certain assets of Robert Vesco. Well, we claim that it does. We have claimed that it does. No claim is made in this case

being too picayune, let me say this: You say "Go after Vesco & Co., Inc." In truth, if the time ever comes for their involvement it is not really them we are going after; we are going after hsi property.

THE COURT: Which you say is in Vesco & Co., Inc.

MR. CAMHY: Which happens to be standing in their name.

THE COURT: Mr. Orloff's point would be that -- and I don't know whether he puts it in terms of ambiguity -- but he says he ought to be given the chance of arguing this case, because what you are doing is going after the property of Vesco in Vesco

not because he is representing Vesco but because he is representing Vesco & Co., Inc. And there is no question in this lawsuit about the liability of Vesco & Co., Inc., is there?

MR. CAMHY: No, your Honor.

THE COURT: The question about Vesto & Co., Inc. is whether or not you can go after them assuming liability is established, and then you can show that Vesco & Co., Inc. owns property which is really Vesco's, isn't that what it comes down to?

MR. CAMHY: Yes, your Honor. Without

have entered a judgment, but we will submit a judgment. In any case, it will be a default judgment. We are going to take that judgment and we may go to a bank. We may go some place where he has a numbered account and get into a contest as to whether his account is his account or not.

THE COURT: Or you may go to Vesco & Co., Inc.?

MR. CAMHY: Yes, and we say that is his property and they say they are not.

THE COURT: We don't have to debate this further.

MR. CAMHY: I want to get to one issue

jqa 12

& Co., Inc. It seems to me the more accurate way to describe the situation is you have to first establish liability and, having done so, you can seek Vesco's assets wherever you can find them.

MR. CAMIY: Precisely, your Honor. Let's get to really the critical issue on any situation like this. They say that the fundamental power of any court is its default power. I say to your Honor that if you want to focus on the problem here, the fact is that Mr. Vesco is defaulting. And this court will have, or we will, and I think we already

Camhy. I would suppose that as a general proposition if a default judgment is entered and pursuant to that judgment proceedings are brought against somebody else, that that somebody else doesn't have the opportunity to raise the claim that no cause of action was stated. I am not sure of that. I would suppose it is possible that there might be a way to raise a claim that no cause of action was stated and that therefore you can't come after me. I don't think we have to worry about that at this point.

It seems to me that the situation we are in today, Mr. Orloff and Mr. Camhy, is this: I am fully aware of the problems which are involved in this matter. I know who Vesco is. I know what

jqa 13

and maybe I am borrowing trouble but let's get it clear. He says the complaint does not state a claim and can he ever raise that. Well, your Honor, I am frank to say he can't raise that ever. It is none of his business whether it states a claim any more than it is a bank's business whether it states a claim. I state to your Honor it states a claim or I wouldn't have put it down there. I don't think it is their business to say to anybody.

THE COURT: I don't know about that, Mr

In any event, I don't think you are entitled to come into this cause of action, this lawsuit, at this point. I am going to deny your motion to intervene in light everything I have said.

All right, thank you, gentlemen.

- -

Vesco & Co. is.

Of course, you are not going to take the position that you are Vesco, which you aren't.

And, of course, if Mr. Camhy reaches the point where he thinks he can go after Vesco & Co., Inc. to satisfy a judgment against Vesco, you are going to have the fullest opportunity to make whatever presentation you want. The question of whether or not you can argue that there is a cause of action stated here, it seems to me, is one which you can then raise at that point. Mr. Camhy says he doesn't think you can.

(813a - 815a)

Judgment entered against Bahamas Commonwealth Bank, entered December 17, 1974.

been effected by Joseph A. Bondi and David M. Butowsky on the 25th day of October, 1973, and proof of such service having been filed in the office of the Clerk of this Court on the 7th day of January, 1974; and

Defendant Bahamas Commonwealth Bank, having failed to plead, appear, move or otherwise defend with respect to the Complaint herein, and the time for said defendant to appear answer or otherwise move having expired, and said deferdant's default having been noted and entered;

AND, a Default Judgment having been entered against Defendant Bahamas Commonwealth Bank on February 19, 1974, including, inter alia, a dollar judgment in the amount of

MICROFILM
DEC 17 1974

Judgment

814a

COURT

DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

Civ. Action No.

73 Civ. 2518 (CES)

JUDGMENT

#74,971

This action having been commenced by the filing of a Complaint on the 7th day of June, 1973, and an amended Complaint having been filed and an additional summons having been issued on the 7th day of September, 1973, and this Court by Order dated October 19, 1973, having authorized Joseph A. Bondi and David M. Butowsky to effect service of process herein on defendant Bahamas Commonwealth Bank and such service having

JUDGMENT ENTERED - 12-17-74

Raymond J. Burghardt
CLERK

Judgment

[illegible] interest thereon by reason of the acts
[illegible] Count II of the Complaint; it is hereby

ORDERED, ADJUDGED AND DECREED that the Clerk of the Court enter judgment against defendant Bahamas Commonwealth Bank in the sum of $500,000.00 with interest in the money judgment book of this Court nunc pro tunc as of February 18, 1974.

DATED: New York, New York

~~November~~ December 17, 1974

Charles E. Stewart, Jr.

U. S. D. J.

(P8I8 - P9I8)

Order dated April 3, 1975 as to final judgments against Robert L. Vesco.

Robert L. Vesco on July 18, 1974, establishing that a portion of the damages recoverable under the judgment of October 5, 1971, amounts to $2,188,354.93, it is hereby

ORDERED, that both of said judgments are and were at the times when they were entered final judgments of this court; and it is further

ORDERED, that no further action of this court or any other court is required before the judgment entered July 18, 1974 may be presented for execution to any court of general jurisdiction in the United States or any foreign court that recognizes the validity of said judgment; and it is further

ORDERED, that the judgment entered July 18, 1974 and the plaintiff's right to have execution thereunder for the amount of $22,188,354.93, are and will be in no way affected by the

Order 817a

U.S. DISTRICT COURT
FILED
APR 4 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO et al.,

Defendants.

73 Civ. 2518 (CES)

ORDER

RECEIVED
CHAMBERS
JUDGE STEWART
APR 3 1975

A judgment having been entered herein against Robert L. Vesco on October 5, 1973, which judgment did not establish the specific amounts of damages recovered by the plaintiff from Robert L. Vesco;

AND a judgment having been entered herein against

U. S. D. J.

plaintiff's right to prove and to recover other amounts pursuant to the judgment entered October 5, 1973.

Dated: New York, New York
April 3, 1975

(819a - 821a)

Default Judgment against Bahamas Commonwealth Bank, entered March 31, 1975.

been issued on the 7th day of September, 1973, and this Court by Order dated October 19, 1973, having authorized Joseph A. Bondi and David M. Butowsky to effect service of process herein on defendant Bahamas Commonwealth Bank and such service having been effected by Joseph A. Bondi and David M. Butowsky on the 25th day of October, 1973, and proof of such service having been filed in the office of the Clerk of this Court on the 7th day of January, 1974; and

Defendant Bahamas Commonwealth Bank, having failed to plead, appear, move or otherwise defend with respect to the Complaint herein, and the time for said defendant to appear, answer or otherwise move having expired, and said defendant's default having been noted and entered;

AND, a Default Judgment having been entered against Defendant Bahamas Commonwealth Bank on February 19, 1974,

MICROFILM MAR 31 1975

Default Judgment. 820a

U.S. DISTRICT COURT FILED MAR 28 1975 S.D. OF N.Y.

RECEIVED CHAMBERS JUDGE STEWART

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

Civ. Action No.

73 Civ. 2518 (CES)

Default

JUDGMENT

#15,268

This action having been commenced by the filing of a Complaint on the 7th day of June, 1973, and an amended Complaint having been filed and an additional summons having

JUDGMENT ENTERED - 3-31-15

Raymond H. Burghardt
CLERK

[illegible] and 50 together with interest thereon by reason of the acts alleged in Count XI of the Complaint; it is hereby

ORDERED, ADJUDGED AND DECREED that the Clerk of the Court enter judgment against defendant Bahamas Commonwealth Bank in the sum of $500,000.00 with interest in the money judgment book of this Court nunc pro tunc as of February 19, 1974.

DATED: New York, New York

November 20th, 1974

Charles E. Stewart, Jr.

U. S. D. J.

MA.

Order to Show Cause dated May 20, 1975, with supporting affidavit of Daniel L. Carroll.

(822a - 842a)

hereof, show cause before the Honorable Charles E. Stewart, Jr. United States District Judge, at the United States Courthouse, Foley Square, New York, New York, Room 26c2 on the 28th day of May, 1975, at 10:30 A.M. or as soon thereafter as counsel can be heard, why an order should not be entered herein pursuant to Rule 69 of the Federal Rules of Civil Procedure and Rules 5021, 5225 and 5228 of the New York Civil Practice Laws and Rules:

(a) appointing a receiver to collect and sell any personal property in which defendant Robert L. Vesco has an interest and to do any other act designed to satisfy the judgment entered against Robert L. Vesco and in favor of plaintiff in the above-entitled action on July 12, 1974 in the amount of $2,422,466.72 and the judgment entered by this court on

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

---

75 Civ. 2518 (CES)

ORDER TO SHOW CAUSE

Upon the annexed affidavit of Daniel L. Carroll, sworn to May 19, 1975 and sufficient cause appearing therefor, it is hereby

ORDERED, that defendants Robert L. Vesco, Vesco & Co., Inc. and any other party having an interest in the subject matter

the entry of said order, all shares of common stock of International Controls Corp. in its possession, custody or control including 846,380 shares of such stock held of record by defendant Vesco & Co., Inc. and 122,463 shares of such stock held of record by defendant Robert L. Vesco;

(d) directing defendants Robert L. Vesco and Vesco & Co., Inc. to deliver to said receiver, within 20 days from the entry of said order, all shares of common stock of Fairfield General Corporation in its possession, custody or control including all shares of such stock held of record by defendant Robert L. Vesco; and

(e) upon the failure of defendants Robert L. Vesco and Vesco & Co., Inc. to deliver the stock as required by (b) and (c) above, directing that International Controls Corp.

September 11, 1974 in an action entitled International Controls Corp. v. Robert L. Vesco (74 Civ. 1558) against Robert L. Vesco and in favor of International Controls Corp. in the amount of $2,900,000;

(b) directing defendant Robert L. Vesco to deliver to said receiver, within 20 days from the entry of said order, all shares of common stock of International Controls Corp. in his possession, custody or control including 122,463 shares of such stock held of record by defendant Robert L. Vesco and 846,380 shares of such stock held of record by defendant Vesco & Co., Inc.;

(c) directing defendant Vesco & Co., Inc. to deliver to said receiver, within 20 days from

tiff herein and against Robert L. Vesco on September 11, 1974 in the amount of $2,900,000 remains unsatisfied; and it is further

ORDERED, that personal service of a copy of this Order and supporting papers upon Messrs. Hannoch Weisman Stern & Besser attorneys for defendant Vesco & Co., Inc. on or before May 21, 1975 and that service by certified mail, return receipt requested, addressed to defendant Robert L. Vesco at 170 Denville Road, Boonton Township, New Jersey 07005 and Brace Ridge Road, Nassau, Bahamas, his last known addresses, shall be deemed good and sufficient service.

Dated: New York, New York
May 20, 1975

/s/ CHARLES E. STEWART, JR.
U.S.D.J.

be permitted to cancel on its books all shares of its stock held of record by defendants Robert L. Vesco and Vesco & Co., Inc. in satisfaction of the judgments referred to in (a) above and upon such cancellation a hearing be held for the purpose of determining the value of such shares at the time of cancellation,

upon the ground that the judgment entered herein in favor of plaintiff and against Robert L. Vesco on July 12, 1974 in the amount of $2,422,466.72 remains unsatisfied and that the judgment entered by this Court in an action entitled International Controls Corp. v. Robert L. Vesco (74 Civ. 1558) in favor of plain-

in support of ICC's application for an order, the effect of which would be to assist ICC in satisfying, at least in part, the judgment in the amount of $2,422,466.72 entered herein on July 12, 1974 against Robert L. Vesco ("Vesco") and the judgment in the amount of $2,900,000 entered by this Court on September 11, 1974 in favor of ICC and against Vesco in an action entitled International Controls Corp. v. Robert L. Vesco (74 Civ. 1558). Specifically, ICC requests that the Court appoint a receiver and direct defendants Vesco and Vesco & Co., Inc. ("Vesco & Co.") to deliver to the receiver all shares of ICC stock in their possession, custody and control including shares they own of record and, upon their failure to do so, permitting ICC to cancel said shares on its books after which a hearing would be held in order to determine the value of such shares at the time of cancellation and thus the extent to which such cancellation satisfied the above-referred to judgments. The order requested would also direct defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, et al., :

Defendants. :

----------x

73 Civ. 2518 (CES)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL L. CARROLL, being duly sworn, deposes and says:

1. I am associated with the firm of Shea Gould Climenko Kramer & Casey, attorneys for International Controls Corp. ("ICC"), plaintiff in the above-entitled action. I submit this affidavit

3. Following Vesco's default in answering the complaint, a default judgment was entered on October 5, 1973, which provided for the holding of a hearing to determine the extent of Vesco's liability to ICC. Following a partial inquest held on May 14 and 22, 1974 and July 12, 1974, a judgment was entered in favor of ICC and against Vesco in the amount of $2,422,466.72. A copy of the July 12, 1974 judgment is annexed hereto as Exhibit "B". Although ICC has attempted to collect on said judgment, it remains wholly unsatisfied.

4. On April 8, 1974 ICC commenced an additional action against Vesco and, upon his failure to answer the complaint therein, a default judgment was entered on September 11, 1974 in the amount of $2,900,000. This judgment, a copy of which is annexed hereto as Exhibit "C", also remains wholly unsatisfied.

[illegible] the ICC and Fairfield

Vesco to deliver to the receiver all shares he owned in Fairfield General Corporation.

2. This action was commenced on June 7, 1973. On July 3, 1973 a preliminary injunction was entered enjoining defendants Vesco and Vesco & Co. "from directly or indirectly using, selling, encumbering or otherwise disposing of. . .(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.; (ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco and (iii) common stock of defendant Fairfield General Corporation owned and controlled by defendants Robert L. Vesco and Vesco & Co." A copy of said preliminary injunction order is annexed hereto as Exhibit "A".

Co., Vesco is the beneficial owner of the ICC stock held of record by Vesco & Co. and that such stock is an asset of Vesco which should be used to satisfy the outstanding judgments. Documents submitted by Vesco & Co., in opposition to ICC's preliminary injunction motion which resulted in the July 3, 1973 preliminary injunction make this clear. Thus, Vesco & Co.'s attorney, Milton H. Stern, stated, in a June 12, 1973 affidavit, a copy of which is annexed hereto as Exhibit "D", that Vesco & Co. was formed July 12, 1972 and that between July 21, 1972 and the end of 1972 Vesco transferred 800,000 shares of ICC to Vesco & Co. in return for 2,513 shares of $1,000 par value preferred stock of Vesco & Co. and that the common stock (48 shares of Class A Voting common stock and 20,000 shares of Class B Non-Voting common stock) are owned by Vesco's wife, Patricia Vesco, as custodian for Vesco's children. The action by the SEC against Vesco and others was commenced on November 27, 1972 following a long investigation.

General stock held of record by defendants Vesco and Vesco & Co. is located, it has to date, been unable to levy upon said stock in order to satisfy its outstanding judgments. Therefore, ICC is seeking relief herein as authorized by §8-317(2) of the Uniform Commercial Code which provides:

> "(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process."

and Rule 5225 of the New York Civil Practice Law and Rules.

6. As to defendant Vesco & Co., it is ICC's position that, although the judgments involved are against Vesco and not Vesco &

the complaint." In affirming that part of the July 3, 1973 preliminary injunction with respect to Vesco & Co. the Court of Appeals concluded that the above recited facts "can hardly be characterized as common, routine or without the semblence of taint." (490 F 2d at 1349).

8. Based upon the above recited facts, ICC contends that, as a matter of law it is entitled to the relief requested herein. However, should the court decide that a further hearing is necessary to determine whether the ICC stock of Vesco & Co. should be used to satisfy ICC's judgment, it is respectfully requested that an order be entered forthwith and prior to said hearing requiring Vesco & Co. to deliver its ICC stock to the receiver appointed.

s/
DANIEL L. CARROLL

Sworn to before me this
19 day of May, 1975

SHEILA L. SCOTT
Notary Public, State of New York
No. 24-3560498
Qualified in Kings County
Commission Expires March 30, 19 77

Thus, it is clear that at the time of Vesco & Co.'s formation and the transfer to it of ICC stock, Vesco was well aware of his problems with the SEC and his ultimate liability to ICC for the matters complained of in the complaint herein as well as in the complaint in the other action brought by ICC resulting in the $2,900,000 judgment. One additional relevant fact which was before the court on ICC's preliminary injunction motion is that Vesco & Co.'s officers consisted of Vesco's wife and his personal secretary, defendant Shirley Bailey.

7. Based upon the facts before it, this court concluded in its Findings of Fact entered in connection with the July 3, 1973 preliminary injunction order that "it appears that Vesco & Co. is a corporate alter ego for defendant Robert Vesco and was created by him during and after the perpetration of the fraud charged in

1. Enjoining, pendente lite, defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, Fairfield Aviation Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, defendant" pending in the Superior Court of New Jersey Chancery Division, Essex County, and (ii) an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in [illegible] Law Division, Essex

Order to Show Cause - 830a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JUL 5 1973
S. D. OF N.Y.

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

73 Civ. 2518 (CES)

ORDER

Plaintiff International Controls Corp., having moved this Court by Order to Show Cause dated June 8, 1973 for an order:

defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

(iv) capital stock of defendant Fairfield Aviation Corporation, a wholly-owned subsidiary of defendant Fairfield General Corporation;

(v) capital stock of defendant Skyways Leasing Corporation, a wholly-owned subsidiary of defendant Fairfield Aviation Corporation;

(vi) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield

County, pending final determination of International Controls Corp. v. Robert L. Vesco et al; and

2. Enjoining, pendente lite, defendants Robert L. Vesco, Vesco & Co., Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhauer, from, directly or indirectly, using, selling, encumbering or otherwise disposing of the following properties without the approval of the Court:

(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;

(ii) 122,463 shares of common stock of International Controls Corp. held of record by

fendant for lack of jurisdiction, [illegible]
and insufficiency of the complaint; .

AND defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation having moved this Court orally (and by memorandum of law in support thereof) for an order dismissing the complaint and all proceedings against them in the within action for lack of jurisdiction, insufficiency of service of process and insufficiency of the complaint;

AND defendant Alwyn Eisenhauer, having moved this Court by Notice of Motion (undated) for an order quashing service upon said defendant in the within action;

NOW, upon reading the affidavits of David M. Butowsky, sworn to June 7, June 18 and June 22, 1973, of Allen M. Shinn, sworn to June 6, 1973, of Laurence Richardson, Jr., sworn to June 7, 1973 and Malcolm McAlpin, sworn to June 7, 1973 in support of plaintiff's motions and the affidavit of Joel M. Grady, sworn to June 26, 1973 in opposition to plaintiff's motion; the affidavit of Milton H. Stern sworn to June 12, 1973 in support of Vesco & Co. Inc.'s motion; and the affidavit of Howard A. Singer, sworn to June 22,

Aviation Corporation or Sky ys Leasing Corporation; and

(vii) any and all other assets or property of such companies.

and by Order to Show Cause dated June 22, 1973 for an order enjoining, pendente lite, defendant Vesco & Co., Inc., its directors, officers, agents, servants, employees and attorneys and those acting concert with it, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3448-72, pending in the Superior Court of New Jersey Chancery Division, Bergen County, pending final determination of the within action.

AND defendant Vesco & Co., Inc. having moved this Court by Notice of Motion dated June 29, 1973 for an order dismissing the complaint and all proceedings in the within action as to said de-

an action entitled "Skyways Leasing Corporation, a New Jersey corporation v. International Controls Corporation, a Florida corporation", Docket No. L-28210-73, pending in the Superior Court of New Jersey, Law Division, Essex County, pending final determination of the within action, and it is further

ORDERED, that defendants Skyways Leasing Corporation, Fairfield General Corporation, Fairfield Aviation Corporation, Frank G. Beatty, Joel Grady and Alwyn Eisenhauer are enjoined, pendente lite, from directly or indirectly, using, selling, encumbering, transferring or otherwise disposing of the following properties without the approval of the Court:

(i) capital stock of defendant Fairfield Aviation Corporation, a wholly owned subsidiary of defendant Fairfield General Corporation;

(ii) capital stock of defendant Skyways Leasing Cor-

1973 in support of defendant Eisenhauer's motion; and said motions having been heard on June 27, 1973 before the Hon. Charles E. Stewart, and upon the ~~opinion of the Court~~ attached typewritten opinion of the Court dated July 2, 1973, adopted by the Court and incorporated in this Order, it is hereby

ORDERED, that defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, their directors, officers, agents, servants, employees and attorneys and those acting in concert with them are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of (i) an action entitled "Fairfield General Corporation, a New Jersey corporation, and Skyways Leasing Corporation, a New Jersey corporation, Plaintiffs, v. International Controls Corporation, a corporation of the State of Florida, Defendant" pending in the Superior Court of New Jersey, Chancery Division, Essex County, and (ii)

(ii) 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco;

(iii) common stock of defendant Fairfield General Corporation owned or controlled by defendants Robert L. Vesco and Vesco & Co.;

and it is further

ORDERED, that defendant Vesco & Co., Inc., its directors, officers, agents, servants, employees and attorneys and those acting in concert with it, are enjoined, pendente lite, from prosecuting or taking any steps in furtherance of an action entitled "Vesco & Co., Inc. v. Lawrence B. Richardson, Jr., et al.", Docket No. C-3488-72, pending in the Superior Court of New Jersey, Chancery Division, Bergen County, pending final determination of the within action; and it is further

ORDERED, that the motions of defendant Vesco & Co., Inc., Fairfield General Corporation, Fairfield Aviation Corporation and

Aviation Corporation;

(iii) a Boeing 707 (registered number N11RV) title to which is in defendant Skyways Leasing Corporation, or the proceeds of the sale of the Boeing 707 if it has already been sold, or any other moneys or assets of defendants Fairfield General Corporation, Fairfield Aviation Corporation or Skyways Leasing Corporation;

and it is further

ORDERED, that defendants Robert Vesco and Vesco & Co., Inc. are enjoined, pendente lite, from directly or indirectly using, selling, encumbering, transferring or otherwise disposing of:

(i) 846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co.;

Skyways Leasing Corporation to dismiss the complaint and all proceedings in the within action, be, and the same hereby are denied in all respects; and it is further

ORDERED, that the motion of defendant Alwyn Eisenhauer to quash service in the within action be, and the same hereby is denied in all respects.

Dated: New York, New York

July 3, 1973

Charles E. Stewart, Jr.
U. S. D. J.

amount of $2,188,354.93; it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiff recover of defendant Robert L. Vesco the sum of $2,188,354.93, plus interest on said sum at the rate of 6% from March 1, 1973, or a total of $2,422,466.71 and that plaintiff have execution therefor; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to prove such additional loss, damage, cost and expense it has suffered by reason of the acts alleged in the complaint, the amount of such additional loss, damage, cost and expense to be determined by the Court upon an additional hearing or hearings to be held as provided for in said October 5, 1973 judgment.

Dated: New York, New York
July 12, 1974

Charles E. Stewart Jr.
U.S.D.J.

JUDGMENT ENTERED - 7/16/74
Raymond F. Burghardt
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., : Civ. Action No. 73 Civ. 2518 (CES)

Plaintiff, :

-against- : JUDGMENT #74,584

ROBERT L. VESCO, et al.,

Defendants.

U.S. DISTRICT COURT FILED JUL 12 1974 S.D. OF N.Y.

A judgment having been entered herein against Robert L. Vesco on October 5, 1973;

AND this cause having been brought on for partial inquest before the Court on May 14 and 22, 1974 and July 12, 1974, after the required notice was given to defendant Robert L. Vesco, and plaintiff having offered proof establishing damages in the

such service having been filed in the office of the Clerk of this Court on the 24th day of April, 1974; and

Defendant, Robert L. Vesco, having failed to plead, appear, move or otherwise defend with respect to the complaint herein, and the time for said defendant to appear, answer or otherwise move having expired, and said defendant's default having been noted and entered;

AND, it appearing to the court that there is no just reason for delay in entering the within judgment against defendant Robert L. Vesco;

NOW, on motion of Shea Gould Climenko & Kramer, attorneys for the plaintiff and upon the affidavit of Sheldon D. Cashy, sworn to the 27th day of August, 1974; it is hereby

Order to Show Cause 837a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, :

Defendant. :

- x

U.S. DISTRICT COURT
FILED
SEP 11 1974
S.D. OF N.Y.

Civ. Action No.
74 Civ. 1588 (CES)

Default
JUDGMENT

#74802

This action having been commenced by the filing of a complaint on the 8th day of April, 1974, and this court by order dated April 9, 1974, having authorized David M. Butowsky to effect service of process herein on defendant Robert L. Vesco by David M. Butowsky on the 17th day of April, 1974, and proof of

U. S. D. J.

JUDGMENT ENTERED - 9/11/74
Raymond F. Burghardt
CLERK

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendant Robert L. Vesco as demanded in the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be and he hereby is, liable to the plaintiff for damages in the amount of $2,900,000 together with interest thereon, by reason of the acts alleged in the complaint herein.

Dated: New York, New York
Aug. 29th, 1974

Stern & Besser, Esqs., Newark, New Jersey. Our firm has served as counsel for Vesco & Company, Inc., a Delaware corporation.

2. Vesco & Company, Inc. was formed on July 12, 1972, to implement an estate planning technique which had been formulate as early as 1968 by my firm along with Lybrand Ross Brothers & Montgomery, Accountants. Following certain tax rulings received April 26, 1972 and July 21, 1972, Mr. Vesco, between July 21, 1972, and year end, exchanged 800,000 shares of ICC Common Stock owned by him for, in part, $2,513,000.00 in par value preferred stock of Vesco & Company, Inc. The par value preferred stock issued to Mr. Vesco was commensurate with the fair market value of the ICC stock exchanged therefor appraised by an investment banker. The purpose and effect of the transfer of Mr. Vesco's stock to Vesco & Company, Inc. was to put an upper limit on the value of Mr. Vesco's ICC holdings for estate tax purposes at the par value

Order to Show Cause 839a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al, Defendants.	Index # 73 Civ. 2518 (CES) AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION, ETC.

STATE OF NEW JERSEY)
.SS:
COUNTY OF ESSEX)

MILTON H. STERN, of full age, being duly sworn, states:

1. I am a member of the firm of Hannoch, Weisman,

for Daniel Vesco, Anthony D. Vesco, Daun L. Vesco, and Robert B. Vesco, with one-fourth of said shares being held for each child. Similarly, Patricia J. Vesco as Custodian for each of the above-named children owns 20,000 shares of Class B Non-Voting Common Stock with one-fourth the said amount for each child.

4. It is not now nor has it ever been licensed or authorized to do business in the State of New York; it does not now nor has it ever done business in the State of New York; and it does not have nor has it ever had any offices in the State of New York.

5. Upon information and belief, Vesco & Company, Inc. was served in this matter only by service upon the registered agent of the corporation in Delaware. Although plaintiff's

of the preferred stock (i.e. the appraised fair market value of ICC stock at the date of the exchange), thus permitting any future appreciation of such stock to inure to the benefit of the non-voting common shareholders.

3. Thus, the basic activity of Vesco & Company, Inc. consists of its ownership of the stock in ICC. As of the date hereof, the record holdings of the stock of Vesco & Company, Inc. are as follows: Robert L. Vesco owns 2,513 shares of the $1,000.00 par value preferred stock; the 48 shares of Class A Voting Common Stock are owned by Patricia J. Vesco as Custodian

of June, 1973.

ANNA WHITE
NOTARY PUBLIC OF N. J.
My Commission Expires Nov. 18, 1974

attorneys knew that we were counsel to Vesco & Company, Inc., we received no notice whatsoever of any application for a temporary restraining order.

MILTON H. STERN

Sworn and Subscribed to
before me this 12th day

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al,

Defendants.

Index No.
73 Civ. 2518 (CES)

NOTICE OF MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION, ETC.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102
(201) 621-8800

Order to Show Cause 842a

RECEIVED
1973 JUN 15 PM 2:36
SHEA, GOULD, CLIMENKO & KRAMER
REC'D TO

(843a - 854a)

Supplemental Affidavit of Daniel L. Carroll, dated May 29, 1975.

facts in connection with ICC's application brought on by order to show cause dated May 20, 1975.

2. Annexed hereto as Exhibit A is a copy of the complaint in the action brought by ICC against Vesco on April 8, 1974 which resulted in the September 11, 1974 default judgment against Vesco in the amount of $2,900,000.

3. I have been advised by ICC's transfer agent that according to ICC's stock books, the certificate of ICC stock held by Vesco and Vesco & Co. were issued on the dates indicated and represent the indicated number of shares:

	ROBERT L. VESCO	
DATE	CFT. NO.	SHARES
6/20/67	CU5277	100,000

Supplemental Affidavit 844a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, et al., :

Defendants. :

----------x

73 Civ. 2518 (CES)

SUPPLEMENTAL AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL L. CARROLL, being duly sworn, deposes and says:

1. I am associated with the firm of Shea Gould Climenko Kramer & Casey, attorneys for International Controls Corp. ("ICC") plaintiff in the above-entitled action. I submit this affidavit in order to bring to the attention of the court some additional

7/21/72		
12/29/72	JU5236	476,000
	TOTAL	846,380

3. Also, in a Claim In Intervention filed in an action presently pending in the United States District Court for the District of New Jersey, entitled Shirley E. Bailey, et al. v. United States, ICC [illegible]ted the following transfers of property by Vesco in the period covered by the complaint herein and sought to have said conveyances set aside:

(a) The transfer on July 14, 1972 of $26,400 by Vesco and/or his wife to four purport[illegible] trust accounts at American National Bank & Trust Company under purported trusts set up in October of 1971;

(b) The transfer of approximately $4,000 by Vesco to himself as custodian for each of his

Supplemental Affidavit

ROBERT L. VESCO

DATE	CTF. NO.	SHARES
5/01/68	JU2542	4,000
5/01/68	JU2543	4,000
10/28/70	JU4413	5,000
10/28/70	JU4415	5,000
3/15/71	CU32139	1,000
3/15/71	CU32140	1,000
3/15/71	CU32141	1,000
3/15/71	CU32142	1,000
3/15/71	C75086	100
3/15/71	C75087	100
3/15/71	C75088	100
3/15/71	CU32143	63
12/29/72	JU5237	100
	TOTAL	122,463

VESCO & CO., INC.

DATE	CTF. NO.	SHARES
7/21/72	JU5150	350,088
7/21/72	JU5152	5,073
7/21/72	JU5155	5,073
7/21/72	JU5157	5,073
7/21/72	JU5159	5,073

four minor children under the New Jersey Gifts to Minors Act to Custodian Accounts at the American National Bank & Trust Company between August, 1971 and December, 1972;

(c) The transfer on or about October 22, 1971, by Vesco and his wife of three parcels of real property, all situated in the Township of Boonton, Morris County, State of New Jersey, and containing 45 acres, 2.93 acres, and 9 acres respectively to Shirley E. Bailey, Ralph P. Dodd and Richard E. Clay, as co-trustees of the purported trusts referred to above;

(d) The transfer by Vesco on March 2, 1973 of 60,000 shares of stock of International Health Sciences, Inc. as follows:

(i) 15,000 shares to Patricia J. Vesco, as custodian for Anthony D. Vesco;

(ii) 15,000 shares to Patricia J. Vesco, as custodian for Dawn Lee Vesco;

(iii) 15,000 shares to Patricia J. Vesco, as custodian for Daniel W. Vesco;

(iv) 15,000 shares to Patricia J. Vesco, as custodian for Robert Bruce Vesco; and

(e) The transfer by Vesco in 1972 and 1973 a total of 96,876 shares of Fairfield General Corporation stock a follows:

(i) To Patricia J. Vesco, as custodian for Anthony D. Vesco: 1,159 shares;

(ii) To Shirley Bailey, Richard Clay and Ralph P. Dodd, as trustees under a trust for the benefit of Anthony D. Vesco: 23,060 shares;

(iii) To Patricia J. Vesco, as custodian for Daniel W. Vesco: 1,159 shares;

(iv) To Shirley Bailey, Richard Clay and Ralph P. Dodd, as trustees under a trust for the benefit of Daniel W. Vesco: 23,060 shares;

(v) To Patricia J. Vesco, as custodian for Dawn Lee Vesco: 1,159 shares;

(vi) To Shirley Bailey, Richard Clay and Ralph P. Dodd, as trustees under a trust for the benefit of Dawn Lee Vesco: 23,060 shares;

(vii) To Patricia J. Vesco, as custodian for Robert Bruce Vesco: 1,159 shares;

(viii) To Shirley Bailey, Richard Clay and Ralph P. Dodd, as trustees under a trust for the benefit of Robert Bruce

Supplemental Affidavit 848a
Vesco: 23,060 shares.

As the court is aware, Shirley Bailey and Messrs. Clay and Dodd are defendants herein and Shirley Bailey is apparently an officer of Vesco & Co.

DANIEL L. CARROLL

Sworn to before me this
29th day of May, 1975

Notary Public, State of New York
No. 24-3569498
Qualified in Kings County
Commission Expires March 30, 1977

Exhibit A

Supplemental Affidavit 850a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO,

Defendant.

74 Civ. 1588

COMPLAINT

- -X

Plaintiff, by its attorneys David M. Butowsky and Shea Gould Climenko & Kramer, for its complaint herein, alleges:

1. Plaintiff International Controls Corp. ("ICC") is a Florida corporation having its principal place of business in Thomaston, Connecticut. At the times hereinafter mentioned, its shares were publicly held and traded.

2. Defendant Robert L. Vesco ("Vesco") is a citizen of New Jersey who, on information and belief, maintains residences in New Jersey, The Bahamas, and Costa Rica. At times relevant to the complaint herein, Vesco was the President and Chairman of the Board of Directors, owner of more than 24% of the outstanding stock of ICC, and exercised dominance and control over its Board of Directors.

3. The jurisdiction of this Court is invoked under 28 U.S.C. Sections 1331 and 1332. The matter in controversy exceeds the sum or value of $10,000 exclusive of interest and cost. The acts hereinafter referred to were transacted in interstate commerce and by use of the mails.

4. In or about August, 1968, an opportunity arose for ICC to purchase a substantial block of the outstanding stock of Empire Financial Corporation. At that time, due to various alleged business and legal considerations, ICC was unable to consummate the contemplated purchase for its own account. Therefore, Vesco arranged to purchase said stock in his own name with the expressed intention to hold said shares for resale to ICC.

5. From time to time following his purchase of the Empire Financial Corporation stock, Vesco expressed to ICC his intention to pay to ICC any profit he might make on resale if ICC elected not to purchase such stock from him. This statement was made by him without any intention of carrying out such expressed intention and for the purpose of retaining the stock with a view to resale for his personal profit.

6. In the early part of 1969, but prior to May, 1969, specific arrangements were being made by Vesco and others for a resale of the Empire Financial Corporation stock in a public offering at a substantial profit. Vesco omitted to inform ICC or its Board of Directors of the progress of these arrangements and of the substantial potential profit inherent in the ownership of the Empire Financial Corporation shares held by him, which profit was soon to be realized. Instead, he permitted ICC and its Board of Directors to continue in the belief that if the shares were resold, ICC would participate in any profit as hereinabove set forth, and using his position of dominance over ICC's affairs, prevented ICC from calling upon him to either permit ICC to acquire the shares for resale or making specific arrangements

with him to share in the profit on resale as had been theretofore represented and promised by him.

7. (a) In or about May, 1969, Vesco resold the 300,000 shares of Empire Financial Corporation stock in a public offering, resulting in a gain to him of $1,450,000.

(b) A further sum of $1,450,000 representing part of the gain on said sale was paid to other persons pursuant to arrangements made between Vesco and said other persons. No part of said gain was received by ICC.

8. By reason of the foregoing, ICC has sustained damage in the amount of $2,900,000, no part of which has been paid.

9. The matters hereinabove alleged constituted:

(a) A breach by Vesco of his fiduciary duty to ICC.

(b) An illegal fraud, scheme or manipulative device practiced upon ICC in connection with the purchase and sale of the Empire Financial Corporation shares in violation of the Securities Exchange Act of 1934 and Rule 10b-5 of the Rules of the Securities and Exchange Commission.

WHEREFORE, plaintiff demands judgment in the amount of

$2,900,000, together with interest and the costs of this action, or in the alternative, an accounting by Vesco for all profits received by him or others acting in concert with him arising from the wrongful transactions hereinabove set forth.

SHEA GOULD CLIMENKO & KRAMER

By _____
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and

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New York, New York
(212) 725-5360

INDEX NO. 73 Civ. 2518 (CES)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

SUPPLEMENTAL AFFIDAVIT

SHEA GOULD CLIMENKO KRAMER & CASEY
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MO 1-3200

ATTORNEYS FOR Plaintiff

(555a - 865a)

Defendant Vesco & Co., Inc.'s Brief in Opposition to Order to Show Cause.

(855a - 865a)

DEFENDANT VESCO & CO., INC.'S BRIEF IN OPPOSITION TO ORDER TO SHOW CAUSE

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On the Brief
James J. Shrager, Esq.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORPORATION,

Plaintiff,

-against-

ROBERT L. VESCO, et al,

Defendants.

73 Civ. 2518

right to prevail.

This Court is familiar with the procedural history and events to date and the same will not be set forth at length. Suffice it to say that at all times Vesco & Co., Inc. sought to participate and protect its right to be heard as to the merits of the claims against Robert L. Vesco, since it was openly stated from the outset that ICC would attempt to satisfy those claims against Vesco & Co., Inc. For example, on July 12, 1974, when this matter was before the Court upon partial inquest,

PRELIMINARY STATEMENT

This memorandum is submitted in opposition to the application of International Controls Corporation (hereinafter referred to as "ICC") to, in effect, satisfy certain default judgments against Robert L. Vesco by executing against assets of defendant, Vesco & Co., Inc. Two judgments are involved--one in the amount of $2,422,466.72 entered in ICC vs. Vesco, 73 Civ. 2518 (CES) and the other in the amount of $2,900,000.00 in ICC vs. Vesco, 74 Civ. 1518.

Both judgments are default judgments; in both cases plaintiff received its judgment without presenting proof of its

It seems to me that in terms of the dollars, Mr. Carroll has told us what they are, and my notion is that this is reasonably clear.

"On the other hand, what you say about the merits concerns me. I think I am obligated to give you a hearing on the question of conspiracy and on the merits. I'd like to do it promptly. What's your notion on it?

"MR. ORLOFF: Within some reasonable time period, your Honor. I don't mean months, but I am talking certainly about several weeks. I would be ready on that."

the following colloquy took place between Mr. Orloff, representing Vesco & Co., Inc.,and the Court:

> "MR. ORLOFF: Your Honor, I should have an opportunity to put some evidence before the Court also, and I would most respectfully say that I should have the opportunity to put forth evidence, not only as to the dollar figure of any damage award, but also as to the liability issue.
>
> "I realize that the plaintiff has taken a contrary position in its memorandum, but, as we suggested to your Honor in our memorandum, both from the standpoint of Vesco & Co.'s potential vulnerability for any judgment against Robert Vesco, and by virtue of the fact that there has been a conspiracy alleged among a number of defendants, who have not had a chance to defend themselves as yet, on this issue, no judgment should be entered until that defense is put in.
>
> "THE COURT: I have these thoughts about it:

alleged, the correct and appropriate procedure when one defendant defaults is to consolidate the Federal Rules of Civil Procedure 56(b)(2) hearing required to assess the liability of the defaulting party with the trial against the non-defaulting parties. 6 Moore's Federal Practice, §55.06; Frow v. De La Vega, 15 Wall 552, 21 L.Ed. 60 (1872); Davis v. National Mortgage Corp., 320 F.2d 90 (2d.Cir. 1963); Ferguson v. Bartels Brewing Co., 284 F.2d 855 (2d. Cir. 1960); 47 Am. Jur. 2d, Judgments, §1192 (1969). In Frow v. De La Vega, supra, the Supreme Court stated:

> "The question is, whether the court, in such case as this, could lawfully make a final decree against one defendant separately on the merits, whilst the cause was proceeding undetermined against the others. If it could

ARGUMENT

POINT I

EXECUTION SHOULD BE DENIED UNTIL AFTER A DETERMINATION HAS BEEN MADE AS TO THE LIABILITY OF THE OTHER NAMED DEFENDANTS.

The complaint in this action alleges joint liability of several defendants. A group is identified as the "Vesco group" and a conspiracy is alleged to commit tortious conduct, a classic example of potential joint liability. See 6 Moore's Federal Practice, §55.06; 1 Harper & James, The Law of Torts, §10.1, 10.2 (1956).

When joint liability of a number of defendants is

> against him, and proceed with the cause upon the answers of the other defendants. The defaulting defendant has merely lost his standing in court. He will not be entitled to service of notices in the cause, nor to appear in it in any way. He can adduce no evidence; he cannot be heard at the final hearing. But if the suit should be decided against the complainant on the merits, the bill will be dismissed as to all the defendants alike -- the defaulter as well as the others."

The logic of the above cases is compelling. There has been no decision on the merits by any court. To allow collection of a judgment when there has been no decision on the merits and when there is the possibility that when a hearing is finally

be done, then this absurdity might follow: there might be one decree of the court sustaining the charge of joint fraud committed by the defendants, and another decree disaffirming the said charge, declaring it to be entirely unfounded and dismissing the complainant's bill. And such an incongruity, it seems, did actually occur in this case. For, after this final decree against the appellant, the court proceeded to try the issues made by the answers of the other defendants, and decided the merits of the cause adversely to the complainant, and dismissed his bill. This fact is made to appear by the return to a certiorari sued out by the appellee himself.

"Such a state of things is unseemly and absurd, as well as unauthorized by law.

"The true mode of proceeding where a bill makes a joint charge against several defendants, and one of them makes default, is simply to enter a default and a formal decree pro confesso

intention of plaintiff to seek recovery against the assets of Vesco & Co., Inc. and in view of this Court's preliminary determination that Vesco & Co., Inc. is the alter ego of Robert L. Vesco.

Thus, the position Vesco & Co., Inc. is in is analagous to that of a principal and surety, and Vesco & Co., Inc., like a surety, has the right to contest the principal's liability if the principal defaults. A surety stands in the shoes of the principal and the surety generally has the right to raise any

held on the merits that the complaint may be dismissed in all or in part should lead this Court to deny plaintiff's application for orders in aid of execution.

POINT II

DEFENDANT, VESCO & CO., INC., IS ENTITLED TO A HEARING ON THE MERITS OF ICC'S CLAIMS AGAINST ROBERT L. VESCO.

As noted above, Vesco & Co., Inc. sought and received assurances that it would have the opportunity of being heard on the merits of the claims against Robert L. Vesco. Such application and presumably such assurances were based upon the stated

(54 F. Supp. at p. 940). See also United States v. Continental Casualty Co., 214 F. Supp. 949 (D.P.R. 1963); Centraal Stikstof Verkoop., N.V. v. Alabama State Docks Dept., 415 F.2d 452 (5th Cir. 1969); Asociacion De Az. De Gua. v. United States National Bank of Oregon, 423 F.2d 638 (9th Cir. 1970).

Yet another example of an analogous situation supporting Vesco & Co., Inc.'s position herein can be found in United States v. Borchardt, 470 F.2d 257 (7th Cir. 1972). The Government sought in that case to foreclose a federal tax lien

defense which the principal could assert.

In Modern Brokerage Corp. v. Massachusetts Bond & Insurance Co., 54 F. Supp. 939 (S.D.N.Y. 1944), for example, plaintiff sued the defendant surety to recover on a performance bond for certain construction work. The surety raised the defense that the plaintiff had refused to enter arbitration proceedings, despite the principal's demand; and, accordingly, that the action should be stayed until the principal's right to compel arbitration of disputes was given effect.

The Court upheld the surety's position, and its right to raise that defense, which was in actuality a defense belonging to the principal, for the "natural limit of the obligation of the surety is to be found in the obligation of the principal."

proven its right to prevail. Unless a hearing as to liability is held ICC, as we said in a prior brief, "will have its cake and eat it too", for they would impute a judgment against Vesco & Co., Inc. without ever having to prove the allegations on which the judgment is based.

on certain property owned presently by defendant, Borchardt, but previously by defendant, Mensik. Borchardt asserted the defense that the statute of limitations had run, and that certain waivers of limitation purportedly signed by Mensik were in fact fraudulent. Mensik defaulted, however, and the United States asserted that Borchardt could no longer allege defenses "through" the defaulting party.

The Court rejected the Government's position, and stated that Borchardt, as the grantee of the property in question, could assert the above-mentioned defenses, despite the fact that Mensik herself had defaulted. See also Hawkeye-Security Ins. Co. v. Schulte, 302 F.2d 174 (7th Cir. 1962).

To rule otherwise would be a travesty. ICC has never

Respectfully submitted,

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By _____
JAMES J. SHRIGER
A Member of the Firm

-and-

ARUM, FRIEDMAN & KATZ

POINT III

ICC SHOULD BE REQUIRED TO PROVE THAT VESCO & CO., INC. IS THE ALTER EGO OF ROBERT L. VESCO.

It is submitted that no elaboration is necessary in view of the history of this case. Plaintiff should be required to come forward with evidence to support its contention that Vesco & Co., Inc. is the alter ego of Robert L. Vesco.

If plaintiff relies upon an alleged fraudulent conveyance as their brief seems to indicate, testimony as to that issue as well must be taken; plaintiff's brief cannot substitute for evidence.

Receipt of a copy of DEFENDANT VESCO & CO., INC.'S BRIEF IN OPPOSITION TO ORDER TO SHOW CAUSE is hereby acknowledged this 30th day of May, 1975.

SHEA, GOULD, CLIMENKO & KRAMER
Attorneys for Plaintiff

By /s/ Daniel L. Carroll
DANIEL L. CARROLL

Plaintiff's Memorandum of Law in Support of Motion.

(866a - 899a)

MEMORANDUM OF LAW IN
SUPPORT OF MOTION

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

73 Civ. 2518 (CES)

- x

Preliminary Statement

This memorandum is submitted on behalf of International Controls Corp. ("ICC") plaintiff herein, in support of its motion for an order, the effect of which would be to assist ICC in satisfying, at least in part, its outstanding judgments against defendant Robert L. Vesco ("Vesco") totalling over $5,300,000. More specifically, ICC seeks to utilize certain stock held of record by defendants Vesco and Vesco & Co. Inc. ("Vesco & Co.") to satisfy said judgments and in this regard seeks an order (a) appointing a receiver (b) directing defendants Vesco and Vesco & Co. to deliver to said receiver all common stock of ICC and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

73 Civ. 2518 (CES)

Plaintiff, :

-against- :

ROBERT L. VESCO, et al., :

Defendants. :

----------x

MEMORANDUM OF LAW
IN SUPPORT OF MOTION

Vesco and Vesco & Co. to deliver the stock involved to the receiver (Point II, infra).

3. The power of this Court to set aside the transfer of ICC stock by defendant Vesco to Vesco & Co. (Point III, infra).

4. The power of this Court to direct cancellation of the ICC stock on ICC's books in satisfaction of the judgment.

The Facts

This action was commenced on June 7, 1973 and named a total of thirty-two defendants (including Robert L. Vesco and Vesco & Co.) twenty two of whom were named as defendants

Fairfield General Corporation in their possession, custody and control and (c) upon their failure to so deliver the common stock of ICC to said receiver, permitting ICC to cancel said shares on its books in satisfaction of the outstanding judgments and upon said cancellation directing that a hearing be held to determine the value of said stock at the time of cancellation.

This memorandum deals with the following questions:

1. The power of this court to appoint a receiver (Point I, infra).

2. The power of this Court to direct defendants

trolled by Vesco including ICC", 490 F.2d at 1338-39. The scheme alleged in the SEC complaint is said to have begun at least as far back as mid-1970 when Vesco and others commenced preparation to take over control of the IOS complex and continued through at least the date of the filing of the complaint in the SEC action.

The complaint* herein contains eleven counts and alleges violation of the Securities Exchange Act of 1934, principally Section 10(b) and Rule 10b-5, and charges Vesco with fraud, self-dealing, waste of corporate assets and breach

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* Although an amended complaint was served, the default judgment herein against Vesco was entered on the original complaint.

in an action commenced by the Securities and Exchange Commission on November 27, 1972 (SEC v. Vesco, et al. 72 Civ. 5001). As the Court of Appeals noted in a prior decision in this action (International Controls Corp. v. Vesco, 490 F.2d 1334 [2d Cir. 1974]), the complaint in the SEC action alleged 'a scheme of extraordinary magnitude, deviousness, and ingenuity in violation primarily of the anti-fraud provisions of the Securities and Exchange Act of 1934 ... [and] charged that Robert Vesco masterminded and, with his cohorts, implemented a plan involving the manipulation of the assets and securities of a number of corporations controlled by Vesco including ICC". 490 F.2d at 1338-39. The

subsequent sale by ICC of the stock so acquired by the companies controlled by Vesco and his group for grossly inadequate consideration.

The above referred to transactions are alleged to have occurred between September of 1970 and June of 1972.

Count II of the complaint relates to the Fairfield group of companies (i.e. Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation) and the now infamous Boeing 707. It is alleged that the spin off by ICC of Fairfield General in December of 1971 was engineered by Vesco for the purpose of acquiring for himself various assets of ICC including, ultimately, the Boeing 707

of fiduciary duty. The first count of the complaint relates to the series of transactions by which Vesco and his group took over control of IOS. It is alleged that the object of this scheme was to use the assets of ICC to gain control of IOS and then to arrogate to themselves control of IOS and its assets. Details of this scheme are alleged in paragraphs 9 through 17 of the complaint including the IOS loan agreement and amendments thereto in late 1970, the purchase of a substantial block of IOS stock through an ICC subsidiary, the spin off of certain companies to which ICS assets had been transferred to IOS shareholders including ICC and the subsequent sale by ICC of the stock so acquired by the com-

be reimbursed for all costs incurred in connection with Vesco's use of the Boeing 707 and had in the past been reimbursed for all such expenses.

The Third Count alleges that the various transactions surrounding the acquisition of the Boeing 707 and its use by Vesco constituted self dealing and was in breach of Vesco and his group's fiduciary duties as directors and/or officers of ICC.

The Fourth Count of the complaint alleges that the acquisition and sale of stock and assets of IOS, the lease of the Boeing 707 and the contributions made by ICC to Skyways and Fairfield General were not proper to ICC's business and

which had been lavishly renovated by Vesco at ICC's expense and which was operated and maintained by Vesco at the expense of ICC. In connection with the dividend in kind of Fairfield General it is alleged that Vesco and others caused Fairfield General to file a registration statement with the SEC which was materially false and misleading as specifically alleged in paragraph 20 of the complaint and further that Vesco and his group deceived ICC into continuing to make payments under the onerous lease for the Boeing 707 between Skyways and ICC and in declaring the dividend in kind by making certain false representations to ICC that ICC would

The transactions with respect to the Fairfield companies and the Boeing 707 are alleged to have occurred between November of 1970 and late 1972.

The Eighth Count alleges that in connection with the scheme alleged in the First and Second Counts Vesco caused ICC to pay numerous legal fees which were in fact incurred in connection with Vesco's own personal business and that by reason of the wrongs alleged Vesco caused ICC to become a defendant in the SEC action and other legal proceedings which resulted in a further waste of corporate assets.

fulfilled no corporate purpose and constituted a waste and diversion of corporate assets.

The Fifth Count of the complaint alleges certain facts relating to the conversion of the Boeing 707 by Vesco and others for their own use in derogation of ICC's rights and the Sixth Count, seeking to have the lease for the 707 declared void, alleges that the approval of said lease by ICC's board of directors was fraudulently obtained. The Seventh Count again relates to the Boeing 707 lease and alleges that Skyways had breached said lease and deprived ICC of the use of the 707

Midland, in paying the dividend in kind, failed to act with the customary care and skill appropriate to a transfer and paying agent and was grossly negligent in failing to obtain proper corporate authorization from ICC to pay such dividend in kind.

As can be seen from the above, the scheme alleged in the complaint covered a period beginning in at least September of 1970 and continuing through late 1972. When Vesco, after being duly served in this action on July 30, 1973 failed to appear to answer the complaint a default judgment was entered against him on October 5, 1973. This judgment decreed that Vesco account to ICC for all profits or gains

The Ninth Count alleges that in connection with the scheme alleged in the First and Second Counts Vesco caused ICC to pay various improper fees, emoluments and benefits to others and that such fees constituted corporate waste.

In the Tenth Count it is alleged that a total of $1,856,857 is owing to ICC under certain agreements calling for reimbursement to ICC for expenses incurred by Vesco on behalf of IOS and others.

Finally, the Eleventh Count alleges that Marine

and expense, [illegible]

In accordance with the October 5, 1973 judgment a partial inquest was held on May 14 and 22 and July 12, 1974 which resulted in the entry of a judgment against Vesco for $2,422,466.72. The damages proven at the partial inquest related to amounts paid by ICC in connection with Vesco's use of the Boeing 707 for which it was not reimbursed.

On April 8, 1974 ICC commenced an additional action against Vesco and, upon his failure to answer the complaint therein, a default judgment was entered on September 11, 1974 in the amount of $2,900,000.

received by him or those acting in concert or with aiding and abetting him in the transactions entered into by him with funds or property wrongfully held by him by reason of the wrongful acts set forth in the complaint and for all injury sustained by ICC by reason of the acts alleged in the complaint, that Vesco indemnify ICC for all liability to others which it had or may incur by reason of the acts alleged in the complaint and that Vesco was liable to ICC for all loss, damage, cost and expense arising from the acts alleged in the complaint. The judgment further provided for the holding of a hearing to determine said loss, damage, cost and expense, said hearing to be held on notice to Vesco.

tain assets including approximately 970,000 shares of ICC stock held of record by defendants Vesco and Vesco & Co. The instant application is concerned with that stock, 846,380 shares of which is held of record by Vesco & Co. and 122,463 shares of which is held of record by Vesco. The problem encountered by ICC in its attempts to levy on said stock in order to satisfy its judgments is that it does not know and has been unable to ascertain the whereabouts of the certificate representing said stock. In view of the provisions of subsection (1), Section 8-317* of the Uniform Commercial Code, it is doubtful

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* Subsection (1) of Section 8-317 of the Uniform Commercial Code provides:

> "(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source."

Thus, ICC has two judgments totalling over $5,300,000 against Vesco which are totally unsatisfied.

ARGUMENT

Introduction

As the Court of Appeals recognized in its prior decision in this matter Vesco has, of course, fled the United States and has resisted all efforts to induce him to return. In an attempt to preserve and prevent the dissipation of assets of Vesco which could be used to satisfy any judgment obtained herein, ICC moved, at the time it commenced the within action, for a preliminary injunction enjoining the transfer of cer-

upon this provision.

The specific relief requested is authorized by Sections 5201, 5225 and 5228 of the New York Civil Practice Laws and Rules which are expressly made applicable herein by Rule 69(a) of the Federal Rules of Civil Procedure which provides in relevant part:

> "The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, ..."

that any attempted levy on the shares would be valid. However, subsection 2 of that section, in anticipation of a situation where the certificates cannot be located, further provides:

> "(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process."

The relief sought by ICC herein is predicated generally

rather than to a sheriff."

Although the appointment of a receiver is entirely a matter of judicial discretion, Drucker v. Drucker, 53 Misc 2d 446 (Sup. Ct. Queens Co. 1967), it is clear that in the instant case, such an appointment is preferable to other alternatives. Clearly, since the location of the property involved, i.e. the share of ICC stock owned by Vesco and Vesco & Co., is unknown, more conventional methods of enforcing the judgment are unavailable. Also, in the instant case the court is highly familiar with prior procedures in this action as well as the related SEC action and has already appointed Special Counsel for ICC. By appointing a receiver, the court

POINT I

THE APPOINTMENT OF A RECEIVER IS AUTHORIZED BY RULE 5228 OF THE NEW YORK CIVIL PRACTICE LAWS AND RULES

CPLR Rule 5228(a) provides, in relevant part:

"(a) Appointment of receiver. Upon motion of a judgment creditor, upon such notice as the court may require, the court may appoint a receiver who may be authorized to administer, collect, improve, lease, repair or sell any real or personal property in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment. ... If a receiver has been appointed, a court making an order directing payment, or delivery, of property shall direct that payment, or delivery, be made to the receiver

CPLR Rule 5225 provides in relevant part:

"(a) Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of...personal property in which he has an interest, the court shall order that the judgment debtor...deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

(b) Property not in the possession of judgment debtor. Upon a special proceeding*

---

* Since a third party holding property of a judgment debtor is usually not a party to the action before the court, a special proceeding will usually be required. In the instant case Vesco & Co. is already a party and, therefore, no special proceeding need be instituted.

could retain some degree of control over further efforts by ICC to satisfy its judgments which we suggest is preferable to having the ICC stock delivered to the sheriff which, as shown below, would be required under CPLR Rule 5225 were a receiver not appointed.

POINT II

SINCE THE COURT HAS IN PERSONAM JURISDICTION OVER BOTH VESCO AND VESCO & CO., IT HAS THE POWER TO DIRECT THESE DEFENDANTS TO DELIVER PROPERTY IN THEIR POSSESSION, CUSTODY AND CONTROL TO THE RECEIVER

vides that "[t]he court may order any person to execute and deliver any document to effect...delivery."

Of course, in the instant case, ICC submits that subdivision (a) of Rule 5225 is applicable to property held by Vesco and subdivision (b) to property held by Vesco & Co. Also, as shown above, CPLR Rule 5228 permits delivery to be made to a receiver rather than a sheriff.

Moreover, under the authority of subdivision (c) of Rule 5225, the court may direct Vesco and Vesco & Co. to deliver any stock of ICC to the receiver. See 6 Weinstein Korn Miller, New York Civil Practice §5225.21,

commenced by the judgment creditor, against a person in possession or custody of...personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person...to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff... Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested..."

Subsection (c) of CPLR Rule 5225 further pro-

failing to report income on which more that $1,500,000 in taxes was owing and was then a resident of Nassau, Bahamas, although a United States citizen. In affirming the order directing Ross to turn over the stock to the receiver, the Court of Appeals stated:

> "The District Court's order to Ross to turn over his stock certificates to the receiver was not in excess of the court's statutory authorization. The court had personal jurisdiction over Ross, acquired by personal service of summons on his authorized agent. Personal jurisdiction gave the court power to order Ross to transfer property whether that property was within or without the limits of the court's territorial jurisdiction. See New Jersey v. City of New York, 283 U.S. 473, 482, 51 S. Ct. 519, 75 L. Ed. 1176 (1931); Massie v. Watts, 6 Cranch 148, 10 U.S. 148, 3 L. Ed. 181 (1810); Marshall v. Turnbull, 32 F. 124, 125 (C.C.E.D.

p. 52-380.

In addition, the fact that the ICC stock held by Vesco and Vesco & Co. may be outside of the jurisdictional limits of the court does not prevent the court from entering an order as permitted by CPLR Rule 5225(c) in that the court has in personam jurisdiction over both Vesco and Vesco & Co. In United States v. Ross, 302 F. 2d 831 (2d Cir., 1962), the government sought and obtained from the District Court an order appointing a receiver and directing the defendant (Ross) to transfer to the receiver shares of stock he held in two corporations. Ross was charged with

P. 2d 564 (1945), cited with approval in the Comments to § 42a-8-317 of the Code, wherein an Oregon court enjoined the transfer of a security in a safe deposit box in the State of Washington.

[2] In addition, this Court has personal jurisdiction over the defendants and, if justice and the reasonable demands of the situation warrant, may order the defendants to do or refrain from doing, certain acts in another state. Restatement (Second), Conflict of Laws § 53; Columbia Nastri & Carta Carbone v. Columbia, Ribbon & Carbon Mfg. Co., 367 F. 2d 308, 313 (2d Cir., 1966).

Injunctive action by this Court find precise support in a recent decision by a Connecticut Superior Court judge in Olin Corporation v. L. C. Liquidating Corp., Dkt. No. 17273, Superior Court for Fairfield County (December 15, 1971), Judge George sustained an injunction prohibiting the corporate defendant from transferring, selling or in any other manner disposing of the capital stock owned by it in a wholly owned subsidiary, a Nevada corporation. The court further ordered that the shares of

N.Y., 1887); S. E. C. v. Minas De Artemisa, S.A., 150 F. 2d 215 (9th Cir., 1945); Restatement, Conflicts, §§ 94, 97 and Comment a (1934) (Tent. Draft No. 4, 1957)." (302 F. 2d at 834)

In Fleming v. The Gray Manufacturing Company, 352 F. Supp. 724 (D. Conn., 1973), the court, on plaintiff's motion to attach certain stock in order to secure satisfaction of any judgment that might be entered, stated:

"...in a proper case the creditor of a security owner may seek the equitable aid of a court of competent jurisdiction to gain control of a security which cannot be readily attached by means of the ordinary procedures provided for in law. See Hodes v. Hodes, 196 Or. 102, 155

in personam jurisdiction over both Vesco and Vesco & Co. can direct the delivery of property by them to a receiver, regardless of where that property is located.

> stock in Nevada be delivered up to a Connecticut sheriff in order that they might be made subject to the plaintiff's foreign attachment."

See also: Humble Oil and Refining Co. v. Copeland, 398 F. 2d 364, 367 (4th Cir., 1968) and Douglass v. First National Realty Corporation, 351, F. Supp. 1142, 1148 (Dist. of Col., 1972), which involved a supplementary proceeding under Rule 69 which sought to satisfy a judgment previously entered.

In view of the foregoing, we respectfully submit that there can be no question that this court, having

At the hearing, held at the request of Vesco & Co. subsequent to the adoption of its Findings and Conclusions, the Court below made the following statement in connection with the above quoted Findings:

> "I concluded, on the basis of material which is before me . . . that Vesco & Co., Inc. was at least for purposes of temporary relief a creature of Robert Vesco.
>
> * * *
>
> "I thought Vesco & Co., Inc., at least for purposes of temporary relief, was presumptively closely enough associated with Robert Vesco, and I believe ought to be dealt with in that respect."

After reviewing the facts upon which the above recited finding was based, the Court of Appeals concluded

POINT III

UNDER THE FACTS PRESENTLY BEFORE THIS COURT THE TRANSFER OF ICC STOCK BY VESCO TO VESCO & CO. IN LATE 1972 SHOULD BE DISREGARDED

A. Vesco & Co. is Vesco's Alter Ego

The Findings of Fact adopted by the Court on ICC's preliminary injunction motion in July of 1973 stated:

> "On the papers before the Court it appears that Vesco & Co. is a corporate alter ego for defendant Robert Vesco and was created by him during and after the perpetration of the fraud charged in the complaint."

offered to it, was as follows: Aside from the fact that it has the same name as Robert Vesco, Vesco & Co.'s assets consists entirely of property (i.e., the ICC stock), contributed to it by Vesco and members of his family. Vesco & Co.'s basic activity consists of the ownership of that ICC stock and, it apparently engages in no other activity. Thus, Vesco & Co. has no real business purpose and serves no business function other than holding Vesco's ICC stock.

In addition, Vesco has complete control over Vesco & Co. He owns all of the preferred stock and the common stock is owned by his wife, as custodian for his children. Its management consists of his wife and his personal secretary, Shirley Bailey, also a defendant herein.

that said facts "can hardly be characterized as common, routine or without the semblence of taint." (490 F. 2d at 1349).

Thus, both this Court and the Court of Appeals concluded that the corporate entity Vesco & Co. should, for the purpose of the temporary relief requested, be disregarded and that Vesco & Co. should be treated as if it were Robert Vesco.

The evidence before the Court on the preliminary injunction motion, which evidence counsel for Vesco & Co. declined to attempt to rebut at an evidentiary hearing

(10th Cir. 1964); In re Gibraltar Amusement, Ltd., 291 F. 2d 22, 24 (2d Cir. 1961), cert. den. 368 U.S. 925 (1961); Henry v. Dolley, 99 F. 2d 94, 97 (10th Cir. 1938); Dunnet v. Arn, 71 F. 2d 912, 918 (10th Cir. 1934); Boatright v. Steinile Rodeo Corp., 46 F. 2d 385, 388 (10th Cir. 1931). Or as was graphically stated in Malon[illegible]y Tank Mfg. Co. v. Mid-Continent Petroleum Corp., 49 F. 2d 146, 150 (10th Cir. 1931), a "corporate entity may be disregarded if it is apparent that a wrongdoer is undertaking to use it to play hide-and-seek with an injured party."

It has been said that the decision as to whether a corporate form should be disregarded "should rest on the effect that the manner of doing business has on the particu-

We respectfully suggest that the above recited facts are the classic elements of a corporate alter ego which may be disregarded if its recognition would result in fraud, illegality, injustice or the defeat of public policy. Zubik v. Zubik, 384 F. 2d 267, 272 (3rd Cir. 1967). In re Penn Central Securities Litigation, 335 F. Supp. 1026, 1035 (E.D. Pa. 1971); Pasos v. Ferber, 263 F. Supp. 877, 881-82 (M.D. Pa. 1967), aff'd 386 F. 2d 452 (3rd Cir. 1967).

It has long been the rule that a corporate entity may be disregarded in cases where not to do so would protect fraud Sell v. United States, 336 F. 2d 467, 472

disregarded against the responsible parties.' 1 Fletcher Cyc. Corp., Perm.Ed. §44; Cf. In re Gibraltor Amusements, Ltd., 291 F.2d 22 (2d Cir.), cert. denied, 368 U.S. 925, 82 S.Ct. 360, 7 L.Ed.2d 190 (1961). In this case, we note that ICC's detailed allegations of fraud against Vesco, personally, have now ripened into a default judgment. Moreover, the virtual identity of interest between Vesco and Vesco & Co. is uncontroverted, as is the fact that Vesco actually transferred his ICC common stock to Vesco & Co. at a time when he was actively engaged in his allegedly fraudulent scheme." (490 F. 2d at 1350).

We respectfully suggest that to recognize Vesco & Co. as a corporate entity would clearly prejudice and operate as a fraud on ICC in that the ICC stock held by Vesco & Co. is, apart from Vesco's own ICC stock, the only

lar transaction involved," and that the doctrine of piercing the corporate veil "is designed to prevent a person from doing injury and then escaping responsibility by hiding behind a corporate shield." Plumbers & Fitters, Local 761 v. Matt J. Zuich Const. Co., 418 F. 2d 1054, 1058 (9th Cir. 1969).

Recognizing the above recited principles, the Court of Appeals in its prior decision herein stated:

> "Although we need not labor the principle that the law will ordinarily treat the corporation as an entity distinct from its shareholders, it is equally well-established that 'whenever it is necessary to relieve or to protect from frauds, the corporation may be

redress to those injured by such fraud. Vesco has, however, attempted to frustrate this policy by transferring what may be the only asset available to provide redress to those injured to a corporate ego.

Moreover, as shown below, Vesco's transfer of his ICC stock to Vesco & Co. is, under accepted principles of law, fraudulent as to ICC and, therefore, voidable. In this regard, it should be recalled that the transfer of this stock took place between July and December of 1972 at a time when Vesco was being investigated by the SEC with respect to the wrongdoing alleged in the complaint.

asset which appears to be available to satisfy ICC's judgments against Vesco. If this stock is not available to satisfy said judgment, Vesco would in effect be insulated from liability for the fraudulent acts alleged in the complaint.

This alone, we submit, mandates the conclusion that Vesco & Co. should be disregarded and that it ought to be dealt with as if it were Robert Vesco. Vesco has been found to be liable to ICC by reason of serious violations of the Federal securities laws. Clearly, the policy of the securities law is to compensate and offer

against Vesco prior to the time at least some of the transfers were made and all of the transfers were made at a time when Vesco was being investigated by the SEC. Also, as a result of the SEC action, other litigation was commenced with respect to the acts complained of herein. Moreover, Vesco's efforts to escape the jurisdiction of United States courts are notorious and need no elaboration. While the question of intent may be a factual one, the nature of this

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*The provisions of the New York Debtor and Creditor Law cited herein are identical to provisions of the Uniform Fraudulent Conveyance Act.

(B) The transfer of the ICC stock to Vesco & Co. was fraudulent under New York Debtor & Creditor Law, §276

The New York Debtor & Creditor Law, §276, provides:

> "Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, is fraudulent as to both present and future creditors."

Thus, if the transfer of ICC stock was made with the intent to hinder, delay or defraud creditors, then it is within the statute. It is submitted that the intent to defraud is clear from Vesco's conduct. The SEC action was commenced

were made in late 1959 and early 1960 and were claimed to be repayments of the loans. The court held such conveyances to have been fraudulent, stressing the fact that the transferee corporation was owned by the McKee family. Here, too, Vesco transferred the assets in question to a corporation controlled by his family, and he obviously would have access to the assets of the corporation.

In Altman v. Finkel, 268 App.Div. 666 (1st Dep't. 1945), aff'd 295 N.Y. 651 (1945), the debtor transferred virtually all his assets to a corporation, the stock of which was held by his wife, and at a time when he had numerous creditors. Plaintiff, however, did not become a creditor of the debtor until some two years later. The court held,

transaction, in which substantial assets were transferred to a family holding company at the time his creditors were closing in on him, would certainly demonstrate fraudulent intent. In Sahley v. Tipton Company, 264 F.Supp. 653 (D. Del. 1967), aff'd 386 F.2d 450 (3rd Cir. 1967), a judgment creditor of one Mark McKee sought to reach assets of McKee transferred to a corporation wholly owned by McKees' children. While the corporation was established in 1957, two years before the business relationship between plaintiff and McKee commenced, McKee "borrowed" at will from the corporation, thereby having free access to the corporation's assets. The transfers which the plaintiff sought to void

> In the present record ... many facts and circumstances ... all of which were 'badges' of actual fraudulent intent." 268 App. Div. at 668-69.

The court further held that the fraudulent intent extended to future creditors, including the plaintiff.

In Campbell v. Baron, 268 App.Div. 324 (3rd Dep't, 1944), motion granted 294 N.Y. 702 (1944), the court held that a transfer without consideration by one then a debtor is presumed frauduient. The only consideration received by Vesco was stock in a shell corporation which had no assets other than the ICC stock transferred.

There is ample evidence here for a showing of Vesco's fraudulent intent. The lack of consideration, the evidence of other efforts by Vesco to escape civil and potential criminal liability, the fact that the transferee was a shell corporation

however, that the transfer was done with an intent to defraud the transferor's creditors. As to the proof of intent, the court stated:

> "Even prior to the adoption of section 276, the existence of an actual intent to defraud present or future creditors made a conveyance of property with that intent void as to such creditors. (Rev. State. of N.Y., part II, ch. VII, tit. III; Case v. Phelps, 39 N.Y. 164; Young v. Heermans, 66 N.Y. 374; Dewet et al. v. Moyer et al., 72 N.Y. 70; Carr et al. v. Breese et al., 81 N.Y. 584; Billings v. Russell et al., 101 N.Y. 266.) The rule was established by these earlier authorities that the question of fraudulent intent was a question of fact and not of law. Actual intent to defraud, or fraud in fact, like any other fact, may be shown by circumstantial evidence.
>
> "In the present record we find ample proof of

fraudulent intent insufficient to satisfy [illegible]

be applicable, since it requires no showing of intent. This was well stated in Gafco Inc. v. HDA Mercantile Corp., 47 Misc. 2d 661 (Civ. Ct. 1965):

> "Although it is reasonably clear that, if there is not evidence sufficient in itself to show actual intent to defraud, a conveyance or assignment cannot be set aside under section 276 of the Debtor and Creditor Law, section 273 is founded upon another theory, which is that a transfer by an insolvent is fraudulent irrespective of any actual intent. And we think this means that if one indebted makes a voluntary transfer, it is presumed, in the absence of some proof to the contrary, that he was then insolvent. (Cole v. Tyler, 65 N.Y. 73; Smith v. Reid, 134 N.Y. 568; Kerker v. Levy, 206 N.Y. 109)." 47 Misc. 2d at 665.

(C) The stock transfer is fraudulent under New York Debtor & Creditor Law §273

New York Debtor & Creditor Law § 273 provides:

> "Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration."

Even if the court were to find the evidence of

fraudulent intent insufficient to satisfy §276, §273 would

> feelings. It must be overcome by circumstances showing on their face that there could have been no bad intent, such as that the gift was a reasonable provision, and that the debtor still retained sufficient means to pay his debts. He can no more delay his creditors by such voluntary conveyance than he can actually defraud them.'

"Thus it appears that the presumption has no relation to actual fraud and cannot be met by proof that such mala fides did not exist. Judge Cardozo in GaNun v. Palmer, 216 N.Y. 611, 111 N.E. 223, said that 'a transfer without consideration by one who is then a debtor raises a presumption of fraud. The creditor may stand upon that presumption until it is repelled. It is not for him to show what other property was retained.' We think that section 273 embodies this judge-made presumption as a background." (70 F. 2d at 334-35)

In Feist v. Druckerman, 70 F. 2d 333 (2d Cir. 1934), another case involving transfers of assets to the debtor's wife, the court, after reciting 273, stated:

> "Now, there is a rule of long standing in the New York courts that a voluntary conveyance made when the guarantor is indebted is presumptively fraudulent. We think this means that, if one indebted makes such a transfer, it is presumed, in the absence of some proof to the contrary, that he was then insolvent. Cole v. Tyler, 65 N.Y. 73; Smith v. Reid, 134 N.Y. 568, 31 N.E. 1082; Kerker v. Levy, 206 N.Y. 109, 99 N.E. 181; GaNun v. Palmer, 216 N.Y. 603, 111 N.E. 223. In Cole v. Tyler, 65 N.Y. 73, 78, it was said:
>
> > 'This presumption * * * is not to be overthrown by mere evidence of good intent or generous impluses or

Vesco to place himself beyond the reach of his creditors. The conveyance of the ICC stock to Vesco & Co. is but one example of such transfers. Given such facts and the above law finding of a violation of § 273 is warranted.

There can be no question that ICC, as a creditor of Vesco, has standing to assert the fraudulent nature of this conveyance. Section 270 of the Debtor and Creditor Law defines "creditor" as"

> "'Creditor' is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent."

and "Debt" as:

> "'Debt' includes any legal liability whether matured or unmatured, liquidated, absolute, fixed or contingent."

As to the insolvency language in the statute, the return of an execution unsatisfied after conveyance otherwise fraudulent is prima facie proof of insolvency, and the debtor has the burden of showing that he has sufficient assets to pay the judgment, Berndt v. Berndt, 192 Misc. 57, (Sup. Ct. On. Co. 1948); Selyson v. Sandner, 42 F. Supp. 415 (S.D.N.Y. 1941). And the mere fact that Vesco can live at an apparently lavish level outside the United States does not negate insolvency, since he may still have no reachable assets and thus be insolvent.

Here, we have evidence of a concentrated effort by [illegible] himself beyond the reach of his creditors

of the debtor-creditor law.

And even if ICC were not a creditor at the time of the transfer (as it clearly was), the Sahley and Altman cases cited above show that if the transfer were fraudulent as to future creditors, plaintiff would have standing to challenge it hereunder.

Finally, Section 278(1) of the Debtor and Creditor Law sets forth the remedies available to a creditor in the situation at hand:

> "Where a conveyance or obligation is fraudulent as to a creditor, when his claim has matured, may, as against any person except a purchaser for fair con-

Thus, there is no necessity that the claim be reduced to judgment at the time of the conveyance, Soc. Milion Athena v. National Bk. of Greece, 281 N.Y. 282 (1939). The acts complained of in the complaint herein all took place prior to or concurrent with the transfer to Vesco & Co. in late 1972. The acts complained of in the other ICC action against Vesco which resulted in the $2,900,000 judgment took place in 1968 and 1969 and involved Vesco's depriving ICC of a corporate opportunity. Thus, since the acts which gave rise to ICC's claims and resulted in the judgments occurred prior to the transfer to Vesco & Co., ICC is clearly a "creditor" for the purpose of the above quoted provisions

"a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

"b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained."

Clearly, Vesco & Co. did not purchase the ICC stock "without knowledge of the fraud" since the corporation is owned and controlled by Vesco and his wife.

For all of the foregoing reasons, we respectfully submit that, as a matter of law, the transfer of his ICC stock by Vesco to Vesco & Co. was fraudulent as to ICC and should, therefore, be disregarded and set aside.

> sideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser.
>
> "a. Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or
>
> "b. Disregard the conveyance and attach or levy execution upon the property conveyed."

It is clear that Vesco & Co. is not a purchaser for fair consideration, which term is defined in §272, as follows:

> "Fair consideration is given for property or obligation,

on its books and that upon such [illegible] a hearing be held for the purpose of determining the value of such stock at the time of cancellation.

Although we have been unable to find any case dealing with the rights of a corporate judgment creditor to cancel stock held in it by its judgment debtor, we respectfully suggest that, under the facts of the instant case and the authorities discussed below, such relief is appropriate herein.

First, reference is made to Section 8-317 of the Uniform Commercial Code, quoted at pages 9-10, supra, which provides that no levy upon an outstanding security

POINT IV

SHOULD VESCO AND VESCO & CO. NOT COMPLY WITH ANY ORDER ENTERED HEREIN, ICC SHOULD BE PERMITTED TO CANCEL THE STOCK HELD OF RECORD BY THEM

Although ICC would hope that defendants Vesco and Vesco & Co. comply with an order directing them to deliver their ICC stock to the receiver, should such an order be entered, ICC is seeking further relief in the event such compliance is not forthcoming. The relief requested is that ICC be permitted to cancel the stock

involved could not be physically reached because the judgment debtor had left the country and the court entered an order directing a corporation to cancel the shares and reissue new certificates to the judgment creditor. Similarly in Sutherland v. Kerrigan, 2 UCC Rep. 404 (Sup. Ct. Nas. Co., 1964), the court, on a motion by a judgment creditor to compel an issuer to transfer certain shares on its book, stated:

> "A judgment creditor's right, moreover, is governed by section 8-317, and subsection 2 of such section contemplates the implementation of the enforcement procedures contained in article 52 of the CPLR. In the opinion of the court, subsection (b) of section 5225 of the CPLR may be utilized to compel the requested transfer upon presentment of proof of the legal

shall be valid until it is actually seized. However, subsection 2 of Section 8-317 further entitles a creditor whose debtor is the owner of a security "to seek aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law."

Under New York law an order permitting cancellation of corporate stock for the purpose of aiding in the satisfaction of a judgment has been recognized. In Progressive Forwarding, Inc. v. Cander Realty Corp., 6 UCC Rep. 390 (Sup. Ct., N.Y. Co., 1969), the certificate

fully requested that an order be entered granting the relief requested on the instant application.

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representative's appointment and continued authority to act."

Thus, New York law has recognized that one of the remedies "allowed at law" pursuant to § 8-317 of the Uniform Commercial Code is the entry of an order directing an issuer of stock to cancel certificates or to transfer certificates on its books.

Conclusion

For all of the foregoing reasons, it is respect-

(900a - 1042a)

Transcript of proceedings before Judge Charles E. Stewart dated June 30, 1975.

(900a - 1042a)

New York, June 30, 1975
Room 2704 - 10:00 a.m.

APPEARANCES:

SHEA GOULD CLIMENKO & KRAMER, Esqs.,
Attorneys for plaintiff,
By: DANIEL L. CARROLL, Esq.,
-and-
GORDON HURWITZ BUTOWSKY & BAKER, Esqs.,
By: DAVID M. BUTOWSKY, Esq.

JAMES J. SHRAGER, Esq.,
Attorney for Defendant Vesco & Co., Inc.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

73 Civ. 2518 (CES)

ROBERT L. VESCO, et al.,

Defendants.

Before:

HON. CHARLES E. STEWART, JR.,

District Judge

matter.

THE COURT: Does that involve going into the question on the merits of what is the relationship between Vesco and Vesco & Co., Inc.?

MR. CARROLL: It involves first of all the question as to the circumstances surrounding the forming of Vesco & Co., the actual structure of Vesco & Co. and Vesco's relationship to it. I think there are two basic legal issues involved here both of which we address ourselves to in our memorandum submitted on our original motion. One is the alter-ego theory and the claim being that Vesco is the alter ego of Vesco & Co., Inc. Therefore, even absent any fraud in the transfer we can reach this thought to

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THE COURT: Good morning, gentlemen.

(Case called.)

THE COURT: I apologize for being late. I had another Vesco related matter downstairs which tock a little longer than I thought it would.

I am not entirely clear what is going to happen at this hearing.

MR. CARROLL: As I understand the purpose for this hearing now is solely to determine whether or not ICC in enforcing its judgments against Robert Vesco can reach the ICC stock hold by Vesco & Co. I am ready to proceedon that

One related to the Vesco & Co. stock and the other related to the Vesco stock. That is held in abeyance pending the determination of this hearing.

THE COURT: Mr. Shrager.

MR. SHRAGER: That comports with my understanding as to what ocurr as well. I would like to submit an additional memorandum of law on the alter-ego aspect.

MR. CARROLL: There is one additional aspect. We claim in addition to the alter ego that the transfers of Vesco & Co. can alsobe set aside under the debtor and creditor law as fraudulent and we are ready to proceed on that appointment too.

jqbr 3

prevent an injusitce.

This was confirmed by the Court of Appeals in its original decision in this case. The alter-ego theory as long as there is the proof there to support it. Your Honor and the Court of Appeals found that at least for the purpose of the temporary relief granted that we had shown sufficient facts to warrant the implementation of the alter-ego theory.

THE COURT: I take it you agree that your motion appointing a receiver cannot be granted until we find at this hearing that Vesco & Co., Inc. is in fact an alter ego.

MR. CARROLL: There are two aspects to the motion.

take.

MR. CARROLL: We will have no problem finsihing today.

THE COURT: How about your case, Mr. Shrager?

MR. SHRAGER: I hope Mr. Carroll is right that it can be finished today. However, I can't be sure until I hear his case. As your Honor knows this is a rather unusual proceeding wherein there has been no discovery and I am not really sure what I have to meet. I don't anticipate that I will be longer than an hour or so.

THE COURT: Are you suggesting that you should have been permitted to engage in discovery?

MR. SHRAGER: No, sir. I don't really know.

jqbr 4

THE COURT: Can you give me some idea of how we are going to proceed and how long it is going to take?

MR. CARROLL: Initially I have documents and things which Mr. Shrager has stipulated to and which we can put into the record. Then we will have three witnesses. I don't expect any of the witnesses will be longer than a half hour or so depending on cross examination.

I would think that we can complete our case without any trouble by mid afternoon.

THE COURT: I am not anxious to cut you down. I just want to know how long you realistically think you will

As to the Lowenbach affidavit which, as I said, was sworn to February 11, 1973, I offer paragraph 3 of that affidavit. I would like to read it into the record. Vesco & Co., Inc. was formed in 1972 to implement an estate plabning technique. Parenthetically, we do disagree with that statement as far as the reason for its formation.

THE COURT: What was the statement again?

MR. CARROLL: Vesco & Co., Inc. was formed in 1972 to implement an estate planning technique which had been formulated as early as 1968 by my firm, referring to the Hannoch, Weisman firm, with Lybrand Ross Brtohers and Montgomery. Following certain tax rulings received in April 26, 1972 and July 21, 1972 Mr. Vesco between

jqbr 5

THE COURT: We will just have to play it by ear.

MR. CARROLL: Initially, your Honor, we will offer some documents. First I would like to offer into evidence portions of the affidavit of Ralph M. Lowenbach who was at the time, February 11, 1973, a member of the firm of Hannoch, WEisman, Stern & Besser and also a portion of the affidavit of Milton Stern who when he signed his affidavit June 12, 1973 was, I believe, and still is, a member of the firm of Hannoch, Weisman, Stern & Besser. These affidavits, the portion I would like to offer relate to the formation of Vesco & Co. and its capital structure.

All told, Mr. Vesco received $2,513,000 in par value preferred stock or an average of slightly more than $3 a share in preferred stock for his ICC stock.

Perhaps the reporter would like to have that.

Are we getting daily copy?

MR. CARROLL: We have not asked for daily copy. I don't think it will be necessary. Unless your Honor would prefer it.

THE COURT: I am not sure my preference is of any consequence here. Obviously it would be easier for me if we had daily copy.

Perhaps,if you don't mind, I would like daily copy especially since it appears that we aren't going to have a

jqbr 6

July 21, 1972 and year end exchanged 800,000 shares of ICC common stock owned by him for a majority of the voting common stock and all of the preferred stock of Vesco & Co., Inc. In addition 46,380 shares of ICC common stock held by Mr. Vesco as custodian for his minor children under the New Jersey's Uniform Gift To Minors Act was exchanged for a minority of the voting common stock and all of the non-voting stock of Vesco & Co., Inc. The par value preferred stock issued to Mr. Vesco was commensurate with the fair market value of the ICC stock exchange therefor, as appraised by an investment banker.

of said shares being held for each child. Similarly Patricia J. Vesco as custodian for each of the above named children owns 20,000 sharesof class B non-voting common stock with one-fourth of said amount for each child."

Next, your Honor, I would offer as Plaintiff's Exhibit 1 the schedule 13-B for Vesco & Co., Inc. filed with the Securities and Exchange Commission signed by Robert L. Vesco and dates September 21, 1972.

xx (Plaintiff's Exhibit 1 marked for identification.)

MR. SHRAGER: I will consentto that going into evidence.

THE COURT: All right. Received.

jqbr 7

lengthy transcript.

MR. CARROLL: Right.

As to the Stern affidavit sworn to June 12, 1973 I would offer paragraph 3 which reads "Thus the basic activity of Vesco & Company, Inc. consists of its ownership of the stock in 1CC. As of the date hereof the record holdings of the stock of Vesco & Co., Inc. are as follows: Robert L. Vesco owns 2,513 shares of the 1,000 par value preferred stock. The 48 shares of Class A voting common stock owned by Patricia J. Vesco as custodian for Daniel Vesco, Antonio D. Vesco and Daun L. Vesco and Robert B. Vesco were one-fourth

ICC.

MR. SHRAGER: You said '73.

MR. CARROLL: '72.

THE COURT: What was that you just read, was it from this document.

MR. CARROLL: Yes, it was, your Honor. Under the heading business.

THE COURT: What page?

MR. CARROLL: I don't have an extrac copy of that, your Honor. I will find it for you.

Item 2 subpart C and D.

THE COURT: Under the heading Identity and Background?

jqbr 8

(Plaintiff's Exhibit 1 was received in evidence.)

MR. CARROLL: I would like to refer to a few parts of that, your Honor. First of all, the portion which refers to the officers and directors of Vesco & Co. and the lists Robert L. Vesco as the president and a director, Shirley Baily as the secretary-treasurer and director and Richard E. Clay as a director and I would note that both Shirley Bailey and Mr. Clary are defendants in this lawsuit. Also the 13-D refers to the business of Vesco and states that presently, that being September '72, has no significant activity or assets other than its ownership of securities in

ICC shares held by the transfers was deemed to be a more desirable business and administrative arrangement than direct ownership. In addition, receipt by Mr. Vesco of both preferred and common stock of Vesco & Co., Inc. was deemed advantageous from the Estate Planning and Administrative viewpoint."

I would offer as Plaintiff's Exhibit 2 a Form 3 filed with the Securities and Exchange Commission by Vesco & Co., Inc. dated January 10, 1973 and containing the notation that it was filed January 17, 1973. It relates to the International Controls Corporation.

xx (Plaintiff's Exhibit 2 was marked for identifi-

jqbr 9

MR. CARROLL: Yes.

Under the heading Transaction, the transaction referred to being the transfer of the ICC stock in Vesco & Co.

THE COURT: You said it was under the heading Business. My document doesn't say business. That is what gave me difficulty in finding it.

MR. CARROLL: Under the heading Purpose of Transaction, I believe that is the heading, it refers to the transaction involved being the transwer of the ICC stock from Vesco to Vesco & Co. as follows:

"Corporate ownership of a portion of the

transfer as reported to the SEC of the 100,000 shares of ICC stock into Vesco & Co.

MR. SHRAGER: If that is the purpose I must rise to call your Honor's attention and counsel's attention to the fact that this document does not indicate that on the 29th of December 1972, 846,380 shares were transferred. It only indicates that that is the total that was held by Vesco & Co. as of that date. There are actually two transfers, one in July and the other in December.

MR. CARROLL: The next document which will reflect that, your Honor, the next 2 exhibits. Your Honor will note that exhibit is signed by Patricia Vesco as president whereas the previous document was signed by Robert Vesco

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cation.)

MR. SHRAGER: I have no objection to it going into evidence.

(Plaintiff's Exhibit 2 was received in evidence.)

(Discussion off the record.)

(Plaintiff's Exhibits 3 and 4 were received in evidence.)

THE COURT: What is the purpose of Exhibit 2?

MR. CARROLL: The purpose is to show the actual

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(Plaintiff's Exhibit 5 was received in evidence.)

MR. CARROLL: That document reflects the initial transfer in July of 1972 of approximately 370,000 shares of ICC stock to Vesco & Co.

THE COURT: Can you explain to me some of theseiems on the first page? On the first line on the first page column 4 there is a figure in parenthesis. What do the parenthesis indicate?

MR. CARROLL: I believe that indicates that it was a sale.

THE COURT: Then the figure in Column 8, does that indicate what Vesco had left after that sale?

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as president of Vesco & Co.

THE COURT: All right.

MR. CARROLL: As Exhibit 5 I would offer the Form 4 filed with the Securities and Exchange Commission by Robert Vesco with respect to his International Controls Corporation stock for the month July '72 and it is signed by Robert Vesco with the date of August 10, 1972.

xx (Plaintiff's Exhibit 5 was marked for identification.)

MR. SHRAGER: In objection to its going in evidence.

purchase by Vesco & Co. of the first two entires.

THE COURT:I see. Well, I really don't see.

In column 8, amount owned,that means owned by Vesco?

MR. CARROLL: That is the amount still owned by Vesco indirectly as that form reports through Vesco & Co.

THE COURT:Let us try it again.

The first line indicates that he sold 350,000 odd shares. It doesn't say to whom. And that left him with 578,000 shares. All of these transactions were on the same date.

The second line indicates that he sold 20,000 shares which he owned as custodian for his children and

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MR. CARROLL: Yes, your Honor, I believe it does.

THE COURT: That means he had something like 928,000 at the beginning of the month, is that right?

MR. CARROLL: Right.

THE COURT: The next line talks about 20,000 shares and describes the nature of ownership as indirect.

MR. CARROLL: They were shares I believe which were owned by Mr. Vesco as custodian for his children. They were also transferred to Vesco & Co.

THE COURT: That is true also of the last line?

MR. CARROLL: The last column indicates the

the shares he owns directly and indirectly and would require that he report any purchases of stock by Vesco & Co.

THE COURT: He is reporting in the third line that Vesco & Co., Inc. bought 370,000 shares which he owned indirectly through Vesco & Co., Inc., is that correct?

MR. CARROLL: Yes, your Honor.

THE COURT: So if you add up column 8 you come out to something like 960 or 970,000 shares which Vesco is reporting he either owned directly or indirectly?

MR. CARROLL: Right.

THE COURT: All right. As a matter of curiosity, column 7, purchase or sale price says N/A, and I assume

jqbr 13

he then owned as custodian for his children 26,000 odd shares, is that correct?

MR. CARROLL: After that transfer, yes.

The third line indicates that he acquired 370,000 odd shares which he personally acquired?

MR. CARROLL: That form reports that he acquired those through Vesco & Co.

THE COURT: Did he acquire them or did Vesco & Co.--

MR.CARROLL: Vesco & Co. acquired the shares but I believe the form requires that an individual report

Exchange Commission on January 17, 1973. It is dated January 10, '73 and it relates to the month of December 1972.

This document reflects the December transfer of ICC stock to Vesco & Co. or reports that transfer.

(Plaintiff's Exhibit 6 was marked for identification.)

MR. SHRAGER: No objection to going in, your Honor.

(Plaintiff's Exhibit 6 was received in evidence.)

THE COURT: They tell us what, Mr. Carroll?

MR. CARROLL: That document reports the transfer to Vesco & Co. of an additional 400 some odd thousand

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that means not applicable. Why is it not applicable?

MR. CARROLL: I don't know, your Honor.

MR. SHRAGER: It is a tax-free exchange , your Honor. Let me say in connection with this exhibit which is reported for Securities and Exchange purposes and required that I have no objection to this going in and still have no objection however I don't know this exhibit is evidence of anything except what was reported to the SEC.

THE COURT: All right.

MR. CARROLL: As Exhibit 6, your Honor, I would offer Robert Vesco Form 4 filed with the Securities and

same 20,000 referred to on the second line of [illegible]

And then the bottom line is a recapitulation.

MR. CARROLL: The bottom line reflects the purchases by Vesco & Co. of those stocks.

THE COURT: So they wind up according to the bottom line with 846,380 shares.

MR. CARROLL: Correct.

THE COURT: All right.

MR. CARROLL: Mr. Shrager had agreed, your Honor, that the information contained in paragraph 3 of my supplemental affidavit filed in connection with this application dated May 29, 1975 is correct and according to that information the transfers made on July 21, 1972

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shares of ICC stock in December 29, 1972. I note that in the first line it reflects ownership by Vesco following the transfer of 120 sme odd thousand shares of ICC stock after the transfer and a total holding of Vesco & Co. of 846,380 shares.

THE COURT: Presumably the 449,000 shares which are reported in the first line as having been transferred to Vesco & Co., Inc. came from the 578,000 odd shares which were referred to on the first line of Exhibit 5, is that correct?

MR.CARROLL: Yes, your Honor.

THE COURT: And the 26,088 on the second line are the same 26,088 referred to on the second line of Exhibit 5.

some conversations with Mr. Shrager as to what he would and would not stipuate to. Apparently there was a slight misunderstanding as to what I was asking to stipulate to and what he thought he was stipulating to. I am referring to the information contained in paragraphs 3 of my supplemental affidavit which relate to other transfers made by Mr. Vesco in the period late '71 to early '73. I believe --

THE COURT: Transfers by Vesco to whom?

MR. CARROLL: Primarily to his children, in trust for his children. The first transfer relates to the transfer of certain land, three parcels of real property in the Township of Boonton, New Jersey. I believe it is a total of approximately 57 acres of land which according to our

jqbr 16

resulted --

THE COURT: May 29th?

MR. CARROLL: Yes, your Honor. This is a supplemental affidavit. The transfers that were made on July 21, 1972 resulted in certificates being issued to Vesco & Co., one certificate for 350,088 shares and four certificates for 5,073 shares each. The transfer that was made on December 29, 1972 resulted in Vesco & Co. receiving a certificate, one certificate covering 476,000 shares and a holding by Vesco & Co. therefore of 846,380 shares of ICC stock.

Your Honor, in preparing for this hearing today I had

MR. SHRAGER: Your Honor, that one we have a slight problem with as a stipulation. I can stipulate that on or about July 14, 1972 a deposit in the amount set forth was made to trust accounts maintained at the American National Bank & Trust Company and that the transfers were by Mr. Vesco and/or his wife.

MR. CARROLL: That is sufficient.

THE COURT: What was your problem with the stipulation?

MR. SHRAGER: He left out the wife and there was something else and I don't recall what else it was that bothered me.

THE COURT: All right. Do you accept the

information was transferred in October of 1971 by Mr. Vesco and his wife to Shirley Bailey, Ralph Dodd and Richard Clay as co-trustees of the trust set up for Mr. Vesco's children.

MR. SHRAGER: That is acceptable as a stipulation by us.

THE COURT: All right.

MR. CARROLL: The second transfer refers to the transfer in July of 1972, July 14, 1972 of $26,400 by Mr. Vesco and his wife to 4 trust accounts at the American National Bank & Trust Company under trust set up in October '71 for the benefit of his children.

THE COURT: This is your affidavit we are talking about, Mr. Carroll?

MR. CARROLL: Yes, there are transfers referred to in my affidavit.

THE COURT: It is your affidavit, though. The transfers are mentioned in your affidavit.

MR. CARROLL: My supplemental affidavit, yes.

THE COURT: Which I assume I have somewhere but I don't have it with me.

MR. CARROLL: I will give you a copy.

THE COURT: All right, if you have an extra copy fine. I am sure I have it somewhere. Why don't you wait and let me find it if I have it.

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amendment?

MR. CARROLL: Yes, your Honor.

THE COURT: Mr. Shrager, thinks there was something else.

MR. CARROLL: I am not sure what it was.

MR.SHRAGER: I amnot either. I am satisfied the way I stated it.

If Mr. Carroll is satisfied I guess we can proceed, then.

MR. CARROLL: The next grounds refers to stock owned by Mr. Vesco in Fairfield --

THE COURT: All right.

MR. CARROLL: Your Honor, in my supplemental affidavit that I referred to on page 4 it refers to a transfer by Mr. Vesco in 1972 and 1973 of a total of 96,876 shares of Fairfield General Corporation stock to various trusts and custodian ships set up for Mr. Vesco's children. I thought I had a stipulation that these transfers were made but apparently through the misunderstanding I referred to, Mr. Shrager is not prepared to stipulate as to the specifics. I don't know if thereis any problem with the general concept that Mr. Vesco transferred 96,000 shares during that period of the Fairfield general stock.

jqbr 19

MR. CARROLL: The next transfer relates to the transfer by Mr. Vesco in 1972 and 1973 of his 96,876 shares of Fairfield General Corporation stock. I do have a Form 4 filed with Mr. Vesco with the Securities and Exchange Commission on May 1, 1972 in respect to the Fairfield general stock reflecting the transfer of 72,000 shares, disposition of 72,000 shares.

MR. SHRAGER: I have no objection to the exhibit, your Honor.

xx (Plaintiff's Exhibit 7 was received in evidence.)

in this particular action. The other transfers, though he doesn't quite have, the bulk of them were made in '72. Though there was some small number of shares transferred in '72. I don't know if that will satisfy Mr. Carroll.

MR.CARROLL: Am I correct that under sub-paragraphs 2, 4, 6 and 8, paragraph 3E of my affidavit that those transfers are substnatially correct?

MR. SHRAGER: The problem is the timing. The total number of shares is correct. It is my recollection that some 18,000 of it was transferred in '72 in each case and a balance in early '73.

MR. CARROLL: I have no problem with that.

THE COURT: All right.

jqbr 20

MR. SHRAGER: I will be happy to state what I believe occurred and what I am prepared to stipulate to, your Honor. That is, if you look at Mr. Carroll's affidavit the problem comes with the transfers he has delineated as 1, 3, 5 and 7 which are transfers to Patricia J. Vesco as custodian for each of the children. That stock, the stock referred tothere, was stock owned by Mr. Vesco as custodian for the children. So all that was done there is a change of one named custodian to a name of another. I don't conceive as that of the kind of transfers we are talking about or Mr. Carroll is attempting to demonstrate

attempt to make the transfers referred to?

MR.SCHRAGER: Yes.

MR. CARROLL: There are just two additional facts which I would like to refer to and I think both are in the record of prior proceedings or in the official records of this court. One being that the investigation of the Securities and Exchange Commission into the affairs of Mr. Vesco and International Controls Corporation and others was commenced in March of 19[illegible] and that the action against Mr. Vesco, International Controls and others was commenced by the Securities and Exchange Commission in November, I believe, 18, 1972. Finally, I would refer to the [illegible]urt's findings in a prior hearing held in connection with the

jqbr 21

MR. CARROLL: The additional transfer that is referred to in my supplemental affidavit is the transfer by Mr. Vesco on March 2, 1973 of 60,000 shares of stock of International Health Sciences, 15,000 shares to Patricia J. Vesco as custodian for each of the four children. Do you have any problem with that?

MR. SCHRAGER: What happened is there was an attempt to consummate the transfers set forth by Mr. Carroll, that the transfer was not actually made and the stock I presume is still being held by the transfer agent.

MR. CARROLL: Youwill stipulate there was an

the Court of Appeals decision.

MR. CARROLL: I believe that is correct, your Honor.

MR. SHRAGER: As to Mr. Carroll's statement as to the date of the commencement of the SEC investigation I am not prepared to stipulate that. I frankly don't know. As to the filing of the SEC action it is my recollection that it was November of '72 and I think I am prepared to accept that.

THE COURT: I happen to know that it was November '72.

MR. SHRAGER: We are all agreed on that one. As far as the last one, I will accept his representation

yacht that Mr. Vesco was a fugitive on outstanding indictments issued by this Court under Criminal Nos. 73 Cr. 439, 73 Cr. 518 and 73 Cr. 707 and that the docket sheet in '73 Cr. 439 idnicates that a bench warrant had been issued for Mr. Vesco's arrest.

MR. SHRAGER: Can you give us the dates?

MR. CARROLL: The dates of the indictments?

THE COURT: What are the indictment numbers?

MR. CARROLL: All 73 criminal cases, 439, 518 and 707.

THE COURT: They are listed in a footnote in

THE COURT: As to the dateof the commencement of the SEC investigation --

MR. CARROLL: I have a copy of the order pursuant to which the investigation was commenced dated March 14, 1971 and I will show it to Mr. Shrager.

MR. SHRAGER: If Mr. Carroll can tell us it is a true copy I have no objection to it.

MR. CARROLL: As far as I know it is a true copy.

xx (Plaintiff's Exhibit 8 was received in evidence.)

MR. CARROLL: I now call --

THE COURT: Before you call your first witness,

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that there being such indictments, I don't know the dates of them.

THE COURT: The dates are listed along with the numbers in footnote 1 in 490 Federal 2d 1334, and you know what I am referring to, the Court of Appeals decision. It is asserted in the footnote that these indictments were at that time currently outstanding.

MR. SHRAGER: May we have the date of that decision?

THE COURT:January 1974.

MR. SHRAGER: I have no problem with the fact that there are outstanding indictments.

THE COURT: I just wondered --

MR. CARROLL: I haven't really considered it in detail.

THE COURT: In light of Judge Mulligan's dissent on that particular issue I wondered whether there was a problem itself left for us. I don't mean to suggest there is one.

MR. CARROLL: Even if there is a legal problem I don't think there is a practical problem since that aspect of the case has been disposed of.

THE COURT: Before you call your first witness I would like to take five minutes.

(Recess.)

MR. CARROLL: I call Elmer Sticco.

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Mr. Carroll, I don't know that we need to pause on this at this point but I am sure I need a little education. What is the name of the recent Supreme Court decision which says which affirmed the Second Circuit rule on what purchase and sale means?

MR. BUTOWSKY: Blue Chip Manor Drug.

THE COURT: Does that cut across in any way the opinion of the Court of Appeals as to whether or not a purchase and sale was involved in the fairfield stock?

MR. CARROLL: I don't believe it does. I think the Second Circuit followed Birnbaum under Fairfield.

Controls?

A For 15 years.

Q Does that include predecessor companies?

Q Yes.

Q What predecessor company?

A Electronic Specialty Company.

Q When was Electronic Specialty acquired by International Controls?

A In 1969.

Q Are you a member of the board of directors of International Controls at this time?

A No.

Q You have only been with ICC since 1969?

jqbr Sticco-direct 25

E L M E R A N T H O N Y S T I C C O, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q By whom are you presently employed?

A International Controls Corporation.

Q What is your position at International Controls Corporation?

A Executive vice-president.

Q How long have you been employed by International

THE COURT: This was what year?

THE WITNESS: 1973.

Q Would you relate that conversation as best you can recall?

A Basically the board of directors were trying to de-Vescoize the company and as a result of those attempts I asked Vesco if he would be willing to sell his stock to me and some employees.

Q Are you referring to Mr. Vesco's stock and the stock held by Vesco & Co.?

A Yes. I also offered the possibility that Mr. Mailman of Macrodyn would be interested in such a sale.

Q Mr. Mailman of who?

jqbr Sticco-direct 26

THE WITNESS: Yes, sir.

THE COURT: Before that with Electronic Specialty?

THE WITNESS: Yes, sir.

Q Mr. Sticco, referring to the record approximately January of 1973 did you have a conversation with Mr. Vesco concerning a proposed transaction involving his International Controls stock?

A Yes.

Q Do you recall when that took place and where?

A Approximately January 20 at the corporate offices in Fairfield, New Jersey.

Q Where did this February 5th meeting take place?

A I believe it was held at Mr. Mailman's offices here in New York City.

Q Who was present at that meeting?

A I was present, Mr. Mailman, Mr. Vesco and Mr. Vesco's counsel.

Q Who was that?

A I don't recall the names.

Q At this meeting who did the negotiating? I expect it was a negotiating type meeting?

A Yes.

Q Who did the negotiations?

A Primarily Mr. Vesco, Mr. Mailman and myself.

jqbr Sticco-direct 27

THE WITNESS: Macrodyn.

THE COURT: What is Mr. Mailman's first name, do you know?

THE WITNESS: Norton. Mr. Vesco indicated that he would be interested in such a concept and told me that he would contact Mr. Mailman. As I understand it he and Mr. Mailman had two meetings and after those meetings we essentially had a meeting on February 5th and on February 5th we come up with a concept of a possible sale of Vesco stock and the possibility of finding a means wherein we would have voting control of the stock that was in Vesco & Company.

THE COURT: The second point was 20,000 shares or was thatpart ofthe first point?

THE WITNESS: The first point.

THE COURT: 20,000 shares of Vesco stock would go to the Mailman group?

THE WITNESS: Yes, sir.

THE COURT: The second point?

THE WITNESS: Vesco & Company would hire Mr. Mailman as a consultant and Vesco & Company would enter into a contract with Mr. Mailman giving Mr. Mailman the right to vote for directors on the 840,000 shares of stock of International Controls that was in the hands of Vesco &

Q What was the arrangement agreed upon in principle at that meeting?

A I think there were four basic points that we agreed upon in principle and that was that Mr. Vesco had approximately 120,000 shares of stock under his name and h was to sell the 120,000 shares of stock to myself and employees of International Controls, 100,000 shares, 20,000 shares would go to Mr. Mailman and his group. Vesco & Company would hire Mr. Mailman as a consultant.

THE COURT: Wait a minute. You said four points. Are you now on the second?

THE WITNESS: This is the second point.

THE COURT: They couldn't vote it on corporate matters?

THE WITNESS: Under the proposed arrangement, yes, they could not vote it for other corporate matters.

THE COURT: All right. Go ahead.

What was the fourth point or have we covered them all?

THE WITNESS: I guess I covered them all in my summary.

THE COURT: I have only listed three.

Q Did you refer to an option?

A Excuse me, yes. Vesco & Company in its agreement with Mailman would give Mailman an option to purchase 400,000

Company.

THE COURT: Is that the second or third point?

THE WITNESS: The second point was the consultants and the third point was this one.

THE COURT: As I understand the Vesco & Co. would agree with Mr. Mailman and his group that Mailman would have the right to vote that stock?

THE WITNESS: Yes, for directors only. There was a controversy --

THE COURT: For directors only?

THE WITNESS: Yes.

attached to the other portions of this proposal?

THE WITNESS: No, your Honor. We had not arrived at a definite price on the 120,000 shares but we were talking or discussing the possibility of a price between 50 cents and $2 per share.

THE COURT: With respect to the hiring of Mailman as a consultant was there a figure involved?

THE WITNESS: I believe the figure mentioned was $50,000 per year.

THE COURT: What was he supposed to do?

THE WITNESS: His duties were not defined in my presence.

THE COURT: To make sure I have this right, the

shares of International Controls stock at,I believe, $5.50 per share.

THE COURT: 400,000 shares?

THE WITNESS: Yes, sir.

THE COURT: These are common stock?

THE WITNESS: Common stock of International Controls of the 840,000 shares that Vesco & Company had as an asset.

THE COURT: Was there a price?

THE WITNESS: $5.50 per share.

THE COURT: Was that the same price that was

Vesco would sell 100,000 shares of his own stock.

THE WITNESS: 120.

THE COURT: He would sell 100,000 of his own stock and this is stock in ICC and all of this I take it is stock in ICC, 100,000 to you and other employees of ICC and 20,000 to Mailrman, is that right?

THE WITNESS: Yes, sir.

THE COURT: And the price you were talking about was 50 cents to $1?

THE WITNESS: 50 cents to $2.

THE COURT: He thought $2 and you thought 50 cents?

THE WITNESS: That is correct.

THE COURT: Vesco & Co. would hire Mailman as a consultant and you are talking about a $50,000 per year figure

jqbr Sticco-direct 31

proposal that was worked out on February 5th, and this was at the ICC headquarters in Fairfield?

THE WITNESS: Norton Mailman's corporate offices here in New York City.

THE COURT: What does he do besides this?

THE WITNESS: Mr. Mailman is chairman of the board of a company called Macrodyn , a mini congomerate doing approximately 100 million in sales.

THE COURT: The points I have, I am not sure whether I break them down into 4 or 3 or 5 but, first of all,

THE COURT: To vote all of the stock?

THE WITNESS: To voite all of the 840,000 shares.

THE COURT But only for directors?

THE WITNESS: Only for directors.

THE COURT: What did that exclude?

THE WITNESS: That would exclude any other type of stockholder action that would be required, I presume.

THE COURT: Was there any discussion of what it would exclude?

THE WITNESS: I just assumed, sir, that it would exclude anything --

THE COURT: No, not that.

THE WITNESS: No, not to my knowledge.

and you don't know what his consulting duties would be ?

THE WITNESS: No, sir.

THE COURT: Whose proposal was that?

THE WITNESS: I believe that was Vesco's proposal.

THE COURT: And Vesco & Co. would enter into an agreement with Mailman giving him the right to vote, I take it, the 20,000 shares but only for directors and not to vote them for other corporate purposes. I don't quite understand that.

THE WITNESS: The shares were the 840,000 shares that were in Vesco & Company, sir.

and with and what happened?

THE WITNESS: I originally had one meeting with Mr. Vesco and after his meetings with Mr. Mailman I had a meeting with Mr. Mailman and after those two meetings then we met on February 5th.

THE COURT: You met with Vesco first?

THE WITNESS: Yes.

THE COURT: Representing yourself and a group of employees.

THE WITNESS: Yes, your Honor.

THE COURT: How did Mr. Mailman get into the picture?

THE WITNESS: I believe it was a result of my recommendation to Mr. Vesco that Mr. Mailman may be interested

THE COURT: Then the last point I have is that Vesco & Co. would agree Mailman to give him the option to buy 400,000 shares of ICC held by Vesco & Co. at $5.50 a share.

THE WITNESS: Yes, sir.

THE COURT: You say this was a concept that was worked out. How was the concept worked out? Were there discussions between your January 20th meeting and this February 5th meeting that you participated in? That is about this program.

THE WITNESS: Yes.

THE COURT: Tell us about that. Who did you meet

THE COURT: On February 5th and at that meeting these various proposals were stated. Who took the lead in stating these proposals?

THE WITNESS: Vesco and Mailman.

THE COURT: You mean they jointly put them forward?

THE WITNESS: I would say that the proposal of the sale of the 120,000 shares of stock was put by myself. The proposal of the option and the consultant agreement was put by Mr. Vesco.

THE COURT: And the right to vote the stock in Vesco & Co. wasput by whom?

THE WITNESS: I believe that was Mr. Vesco's

jqbr Sticco-direct 34

in the possibility of acquiring the ICC stock that he had.

THE COURT: How did you hear about Mr. Mailman's interest?

THE WITNESS: Mr. Mailman for about three or four months dealt with me relative to a possibility of merging the company Macrodyn with International Controls, five or six months prior to this meeting.

THE COURT: In any event, after these various discussions you had a meeting with Norton Mailman in New York City?

THE WITNESS: Yes, sir.

present yourself, Mailman, Vesco and a lawyer?

THE WITNESS: Vesco's attorney.

THE COURT: You don't know who that was?

THE WITNESS: I don't recall who they were, sir.

THE COURT: Did he participate in the discussions?

THE WITNESS: The attorneys --

THE COURT: Was there more than one?

THE WITNESS: I believe there was more thanone attorney, yes.

THE COURT: Did they all represent Vesco?

THE WITNESS: They all represented Vesco, yes.

THE COURT: Let me be clear on this. At the February 5th meeting there were present you, Vesco, Mailman --

proposal.

Q Was Shirley Bailey at that meeting?

A No.

Q Did you ever meet or discuss this proposal with Shirley Bailey?

A No.

Q How about Mrs. Vesco, Patricia Vesco?

A No.

Q Mr. Clay?

A No.

THE WITNESS: You said at the meeting there were present yourself, Mailman, Vesco and a lawyer.

one of ICC's 80 per cent owned subsidiaries called --

THE COURT: Was the Electronics Specialty?

THE WITNESS: International Controls subsidiary, Datron Systems, Inc.

THE COURT: You had been with Electronic Specialty?

THE WITNESS: That name disappeared after International Controls took us over.

THE COURT: Is Datron the same operation?

THE WITNESS: Datron had some of the units in Electronic Specialty Company, yes, sir.

THE COURT: And you were --

THE WITNESS: President and director.

THE COURT: You ran part of the company?

jqbr Sticco-direct 36

THE WITNESS: I believe two lawyers.

THE COURT: Two lawyers from somewhere?

THE WITNESS: If memory serves me correctly I think there was an attorney from Hogan & Hartson and an attorney from the gentleman's firm.

THE COURT: When you talked to Mr. Vesco earlier on January 20th, was it just the two of you?

THE WITNESS: Yes, sir.

THE COURT: What was your job in ICC in January 1973?

THE WITNESS: I was president and director of

Mailman?

A I believe -- and this is only an assumption I am making that --

MR. SHRAGER: I have to object to any assumptions, your Honor.

THE COURT: Sustained.

Ask the witness to tell us, Mr. Carroll, what happened and perhaps we can get at it that way. I don't think we should get an assumption from the witness.

Q Do you recall the sequence of the conversation at the February 5th meeting, who said what and how the proposals were negotiated?

THE WITNESS: Yes, sir.

THE COURT: You are a director of ICC now?

THE WITNESS: No, sir, executive vice president of ICC and president and director of its two, 80 per cent owned subsidiaries.

THE COURT: Am I correct that you got rid of one division recently?

THE WITNESS: One subsidiary, yes, sir.

Q Did the attorneys participate in the negotiations on the 5th of February 1973 at that meeting?

A They had discussions with us.

Q Did they do the actual negotiations with Mr.

type of arrangement that he could make with the stock, there were considerations of Vesco & Co. that had to be considered.

Q These considerations, did he enumerate what the considerations were?

A No, he just left it with the general statement.

Q Did this transaction come about?

A No.

Q Why not? If you know.

A The transaction was considered at a board meeting on February 5th of International Controls.

THE COURT: The same day?

THE WITNESS: The same day in the afternoon.

THE COURT: Was that a special board meeting?

jqbr Sticco-direct 38

A Most of the proposals were discussed between Mailman, myself and Mr. Vesco and we had occasional comments from the attorneys.

Q During this period January 20th when the proposal first was brought up by yourself and Mr. Vesco on the 5th of February did Mr.Vesco ever say to you that he had to go back and get the approval of Vesco & Co. before he could consider such an arrangement or conclude this arrangement?

A He never mentioned that he had to get the approval of Vesco and could but he made me aware of the fact that the

identification.)

Q Mr. Sticco, I show you what has been marked Plaintiff's Exhibit 9 for identification and ask you if you identify that document?

A Yes, I can.

Q What is it?

A It is the resignation of Robert L. Vesco. It is a resignation letter.

Q From what?

A From International Controls -- it is directed to the board of directors of International Controls Corporation dated February 7, 1973.

Q Did you see that letter on or about that date?

jqbr Sticco-direct 39

THE WITNESS: I believe it was a special directors meetings, yes, sir. Shortly thereafter the board was considering the proposal and shortly thereafter, I believe two days thereafter on February 2nd, Larry Richardson, who was then the president of International Controls, filed a complaint with the SEC and after that complaint appeared why the discussions dropped regarding my proposal.

THE COURT: Did you have any advance notice of that?

THE WITNESS: No, your Honor.

(Plaintiff's Exhibit 9 was marked for

xx

THE WITNESS: The proposal, it was going to be all right with me if the Securities and Exchange Commission, after we had presented it, when I say we, Mr. Mailman and myself, had presented the proposal to the SEC, if it was accepted by the SEC we were willing to go ahead with the proposal. Also there were other conditions which we indicated we would have liked to have cleared up before we accepted the proposal.

THE COURT: I don't mean to indicate that this was the entire proposal but in the general terms in which you have stated it I take it thatit was acceptable to you and to Mr. Mailman, assuming it was approved by the SEC, is that a correct statement?

jqbr Sticco-direct 40

A Yes, I did.

MR. CARROLL: I offer it in evidence.

THE COURT: Was the proposal that was presented to you or that was presented on February 5th acceptable to you? Did you indicate that you were willing to go along with it?

THE WITNESS: Yes, your Honor.

THE COURT: You said that this was all right with you?

THE WITNESS: Yes.

THE COURT: Or words to that effect.

THE COURT: That was after your meeting?

THE WITNESS: Yes. The minutes of that meeting would reflect the proposal because the proposal was outlined by Mr. Mailman and myself to the board at that meeting.

THE COURT: You attended that meeting?

THE WITNESS: I attended that meeting, sir.

THE COURT: Did you present anything in writing to the board?

THE WITNESS: No, sir. Not to my knowledge.

THE COURT: Do you know that there is anything in the minutes?

THE WITNESS: I believe there is, sir.

THE WITNESS: That is correct.

THE COURT: Was the proposal in writing? Was there anything in writing at the February 5th meeting which outlined the proposal?

THE WITNESS: No, I don't think the proposal ever got to the stage where the attorneys had drafted up a draft of the proposal.

THE COURT: Was there anything in writing, a list of points?

THE WITNESS: The only thing that I recall being in writing, sir, was at the February 5th board meeting it was discussed and the proposal was discussed and I believe --

MR. SHRAGER: I have no objection.

(Plaintiff's Exhibit 9 was received in evidence.)

THE COURT: I have a vague recollection that I have seen this letter before.

MR. CARROLL: It was an exhibit to the receivership application.

Q Mr. Sticco, was there any doubt in your mind at the February 5, 1973 meeting as to who was negotiating that deal in behalf of Vesco & Co.?

A No.

Q Who was negotiating?

A Vesco.

THE COURT: Have you seen something in the minutes?

THE WITNESS: I have not personally seen anything in the minutes.

THE COURT: Why do you think there is something in the minutes?

THE WITNESS: Well, I am assuming that if we mad an imp[illegible]ant proposal as this that people taking the minutes --

THE COURT: But you don't know.

THE WITNESS: I don't know.

MR. CARROLL: The proposal is reflected in this exhibit.

A No, sir.

Q What was the price of the ICC stock at the time of these negotiations?

A I don't recall, sir.

Q Approximately.

A I have no idea.

Q Was it being traded?

A I believe it was, sir.

Q About approximately $1 a share?

A I don't recall at all.

Q Well, you were negotiating to fix the price for acquiring 100,000 shares for yourself and the other employees of ICC, were you not?

jqbr Sticco-cross 43

MR. CARROLL: I have no further questions.

CROSS EXAMINATION

BY MR. SHRAGER:

Q Did you know the nature of Mr. Vesco's stockholding in Vesco & Co.?

A I did not know the specifics, no, sir.

Q You don't know whether or not he had any liquidation preferences as to Vesco & Co.?

A No, sir.

Q Or whether or not the value of his interest was paid to the price of the ICC stock?

A Yes.

Q And you indicated the price you were negotiating concerned between 50 cents and $2 a share, is that right?

A That is correct.

Q Did that have any relationship to the then market price for ICC stock?

A No, I was taking the relationship of the book value of the stock at the given time. Inasmuch as I was familiar with the numbers at International Controls I assumed that after we discounted all of the problems in dollars that the book value would be somewhere between 50 and $2 a share and that is how I arrived at my price.

Q I thought you indicated in a question asked by Judge Stewart thatyour price was 50 cents.

A That is correct.

Q And Vesco's price was $2.

A I was inferring the way the Judge said that that that is correct, yes, sir.

Q Was it correct?

A That Vesco's price was $2?

Q Yes.

A As I stated before we didn't arrive at a price but we were talking between 50 cents and $2 a share.

Q You were offering 50 cents and he was demanding $2?

A Perhaps, yes. All right.

Q Was 50 cents the book value?

A I don't recall whatthe book value was as of right now.

Q At the time these negotiations were going on there was an action pending, was there not, the SEC action?

A That is correct.

Q I think you indicated that you were interested in doing was de-Vescoizing the company, is that right?

A I indicated that what the board was interested in doing was de-Vescoinzing the company.

Q What you mean by that is getting Mr. Vesco completely out of the affairs of ICC, is that right?

A That was the board's intent, yes, sir.

Q And it was the board's hope that the SEC would agree,with Mr. Vesco completely out, that the company could be left completely to operate by itself, is that a fair statement?

A That is a fair statement.

Q So Mr. Vesco was sympathetic with such an approach, was he not?

A Yes.

Q And that was because he and his family were substantial stockholders in ICC, were they not?

MR. BUTOWSKY: I object to the form of the question.

MR. CARROLL: I object.

MR. SHRAGER: Let us just have one counsel.

MR. CARROLL: I object.

I think the introductory remark is unnecessary, why he was concerned. If he wants to ask him whether the stockholders --

THE COURT: Overruled. But I do think Mr. Shrager is right, if we are going to have more than one counsel I would like to know about it ahead of time.

(Question read.)

THE COURT: I will sustain that.

Q You indicated, Mr. Sticco, that an approach was made to de-Vescoize the company so that the SEC would permit it to operate on its own, is that correct?

A I indicated that?

Q Yes, in your prior testimony.

A I said that the board.

Q That the board wanted to de-Vescoize the company in the hope that the SEC would permit it to operate on its own?

A That is an assumption that you are making.

Q I am asking you if that is so.

A I don't know whether the SEC would have let us operate --

Q I said in the hope that the SEC would.

A I assume that is what the board's intent was, yes.

Q You were on the board, were you not?

A No, I was not.

Q At the time you were not on the board?

A No.

Q Were you present at board meetings during this period?

A No.

Q Any of them?

A Except for that one, February 5th. I was present at one or two meetings in between.

Q Were there discussions at any of these meetings as to what would happen if the SEC could not be persuaded to come to some agreement with respect to the value or price that ICC stock would sell at?

A I had no recollection of that, sir, at all.

Q Being discussed?

A Correct.

Q Do you recall any discussions as to how they arrived at the price of 5.50 a share for Mr. Mailman's

option?

A I have no recollection of how they arrived at 5.50.

THE COURT: What do you mean they?

THE WITNESS: Mr. Mailman and Vesco.

THE COURT: The option didn't go to both Mailman and you, just to Mailman?

THE WITNESS: Just to Mailman.

Q I take it no agreements were reached at any of these meetings, is that right?

A No formal agreements.

Q It was understood, was it not, that there would have to be formal documents prepared if, as and when an agreement was reached?

A Yes.

Q It was understood, was it not, that those formal agreements would have to contain consents of various parties?

A Yes.

MR. SHRAGER: Nothing further.

THE COURT_ Do you know whether Mr. Vesco met with Mr. Mailman on, for example, the option session at which you were not present?

THE WITNESS: What I do know is that Mr. Vesco met

for a dinner engagement and a breakfast engagement with Mr. Mailman before we met on February 5th.

THE COURT: How do you know that?

THE WITNESS: Mr. Vesco told me himself and Mr. Mailman told me.

Q Did they tell you what they discussed?

THE WITNESS: No, we didn't get into details as to what the discussions were about.

THE COURT: Did they discuss the weather or did they discuss this deal?

THE WITNESS: Vesco had indicated that he was going to meet with Mailman to discuss this concept that was proposed between Vesco and myself.

THE COURT: Do you know whether Vesco knew Mailman?

THE WITNESS: Yes, Vesco knew Mailman.

THE COURT: Do you know what the basis for that relationship was?

THE WITNESS: The potential merger of ICC nad Macrodyn.

THE COURT: What has happened to Macrodyn, do you know?

THE WITNESS: It is still a surviving company, sir.

THE COURT: What do you mean surviving company?

THE WITNESS: They were in financial difficulties two or three years ago but they have now turned the company around and I think it is still a listed company on the American Stock Exchange.

REDIRECT EXAMINATION

BY MR. CARROLL:

Q Mr. Sticco, Mr. Shrager made reference to preparation of formal documents. It is true, is it not, that the three principals at this meeting on February 5th, yourself, Mr. Vesco and Mr. Mailman had agreed upon the general outlines of this deal, that is recited by you in these four points, is that not correct?

A That is correct.

MR. CARROLL: Nothing further.

MR. SHRAGER: I have nothing further, your Honor.

THE COURT: Thank you very much, Mr. Sticco.

MR. BUTOWSKY: When would youlike to break for lunch?

THE COURT: I don't care, Mr. Botowsky. I will suit the convenience of counsel.

MR. CARROLL: We have two more witnesses, your Honor. I don't think either are going to be lengthy.

jqbr Sears-direct 51

Although we are supposed to meet one of the witnesses at about 1 o'clock for lunch. We coulld start Mr. Sears who is here now for 15 or 20 minutes or continue after lunch or wait until after lunch.

THE COURT: Let us spend ten minutes and break for lunch.

H A R R Y L. S E A R S, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q You are an attorney, correct, Mr. Sears?

A Yes, sir, in New Jersey.

Q Are you presently in the private practice of law?

A Yes.

Q Did you at one time have a connection with International Controls Corporation?

A Yes, I did.

Q You were a director of International Controls at one time, is that correct?

A I became a director of International Controls on January 28, 1972.

Q Did you play any role in the investigation of International Controls Corporation by the Securities and

Exchange Commission?

A I am not quite sure what you mean by the question.

Q Did you represent the interests of Mr. Vesco or International Controls Corporation in connection with that investigation?

A There came a time when I did. It had been on going for a year at that time, almost a year at that time. But in January of 1972 when I became associated with Interna Controsl I did have some role, yes, sir.

Q Did you meet with members of the Securities and Exchange Commission, staff members and others?

A Yes, sir, I did.

Q Do you recall when your first meeting was?

A The first meeting with any SEC person?

Q Yes.

A Yes. The first meeting I had was on April 10, 1972 with Mr. Casey and Mr. Cooke.

Q Had you prior to April 10, 1972 discussed the SEC investigation with Mr. Vesco?

A Yes, sir, I had.

Q On more than one occasion?

A On a number of occasions, yes.

Q Had you prior to April 10, 1972 learned or been informed of the progress of the Securities and Exchange

Commission investigation into ICC?

A I had been, yes.

Q From Mr. Vesco?

A Well, from Mr. Vesco and also Mr. Markman and Mr. Thorpe of Logan & Hartson and also through another meeting that I had with John Mitchell.

Q When was the meeting with John Mitchell?

A The meeting I refer to was on February 11, 1972.

Q Could you tell us what the conversation was at that meeting?

A That meeting on February 11th followed a meeting I had had with him that January.

MR.SHRAGER: May I note an objection to this conversation. I can't see how it can be anything but hearsay.

THE COURT: I don't either at the moment but we will go ahead and I will reserve on your objection, Mr. Shrager.

MR. CARROLL: It will be connected, your Honor.

A At the meeting on February 11 --

THE COURT: Wait a minute. Would you read back the last answer, please.

(Answer read.)

THE COURT: Followed a meeting you had had with whom in January?

THE WITNESS: With John Mitchell.

THE COURT: Go ahead.

A At the meeting of February 11, Mr. Mitchell showed me a memorandum which had been prepared by Bradford Cooke who was then general counsel of the SEC for Mr. Casey. It was a copy of the memorandum. That memo contained certain comments with regard to attitudes on the part of staff and Mr. Cooke with regard to the SEC investigation generally and Mr. Vesco in particular.

Q Did you then meet with Mr. Vesco following the February 11th meeting?

A Yes, sir.

Q What didyou tell Mr. Vesco when you met with him?

THE COURT: Do you remember when that was?

THE WITNESS: I dont remember exactly.

THE COURT: Approximately.

THE WITNESS: Undoubtedly within a few days after the meeting of February 11th.

MR. SHRAGER: If I may have a second, your Honor. As you know,this witness is an attorney as you may know. I am not sure if I am correct, he has acted as attorney for Vesco on occasion. When we get into the area of conversation we get into an area concerning the attorney-client privilege and I think the witness should be cautioned

along those lines.

THE COURT: If you don t have it in mind, Mr. Sears, of course you have in mind the obligation as an attorney and the obligations of the attorney-client privilege. I thought, Mr. Carroll, you had developed in the earlier preliminary questions that Mr. Sears had represented Mr. Vesco beginning at a later stage in the SEC investigation.

MR. CARROLL: I believe the testimony was that he was representing ICC.

THE COURT: At a later stage, is that correct?

THE WITNESS: At this stage I was representing ICC.

THE COURT: Did you represent Mr. Vesco during the course of the SEC investigation?

THE WITNESS: At a later date, your Honor, an appearance was entered in my behalf by Hogan & Hartson and this was June '72.

THE COURT: At this point youwere not representing Vesco but you were representing ICC, is that correct?

THE WITNESS: Yes, sir. I must say I am mindful of the privilege and I had not yet reached the point.

THE COURT: You will remind me if we get to that point if I don't think of it.

All right, gentlement, we will stand adjourned to 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

H A R R Y L. S E A R S, resumed.

DIRECT EXAMINATION (Continued)

BY MR. CARROLL:

Q Mr. Sears, when we broke for lunch you were referring to a meeting with Mr. Vesco a few days after your meeting with Mr. Mitchell.

A That is right.

Q Could you tell us what you told Mr. Vesco and what he said to you at that meeting?

A In essence I was reporting to Mr. Vesco on the result of the meeting with Mr. Mitchell and I told him at that time that Mr. Mitchell indicated it might be possible for me to obtain a meeting with Mr. Casey that I was seeking.

I also told him that I had seen a memo that had been prepared by Brad Cooke, general counsel of the SEC, to Casey, giving kind of a rundown on the status of the SEC in which there were expressed certains positions, I guess you would call them, of the ICC staff with regard to the original status of the 6 million Kornfield shares which was part of the subject matter of the investigation.

I also told him that the memo indicated that they had very

jqbr Sears-direct 57

serious reservations and that ther appeared to be matters which were of serious consequence that the staff and Mr. Cooke apparentl considered the investigation to be one that had serious connotations. I told him --

THE COURT: Who said that?

THE WITNESS: Mr. Cooke had in the memo expressed those things. Also in the memo I reported to him that there was an indication that there was consideration of a possible perjury on the part of Vesco in testimony that he had given in depositions, secret depositions.

THE COURT: You told Vesco this?

THE WITNESS: I told Vesco these things, yes. In essence I told Mr. Vesco that he appeared to have bad marks with the staff.

Mr. Vesco's response was that this was just another indication of the kindof harassment, the kind of attitude the staff had demonstrated towards him and expressed the opinion that Cooke who then I believe was relatively knew in the position of general counsel had probably been brainwashed by the staff.

He reassured me that none of these things were true.

Q Did you subsequently meet with the SEC, I believe, on April 10th was the first meeting?

jqbr Sears-direct 58

A I had a meeting with Mr. Casey and Mr. Cooke on April 10th, yes.

Q Was anyone else present?

A No, sir.

Q Could you tell us what the conversation was at that meeting?

MR. SHRAGER: Same objection as this morning, your Honor.

MR. CARROLL: I can shortcut that, your Honor.

THE COURT: I will reserve on Mr. Shrager's objection. Go ahead.

A The meeting was one with Mr. Casey and Mr. Casey had asked Mr. Cooke to be present during the meeting. It was held in Mr. Casey's office in Washington. I won't, unless you want me to, go into an entire account of everything that was said at that meeting.

Q Maybe we can shortcut it. I will ask you whether or not you reported the results of this meeting to Mr. Vesco?

A I did, yes, sir.

Q When did you do that?

A Again, it was within a few days afterwards. I believe I talked with Mr. Vesco on the telephone that night breifly but then we had some further discussions about it.

Q What did you tell Mr. Vesco when you reported that meeting to him?

A I principally told him that Mr. Casey had indicated that it might be possible for ICC to have some kind of hearing or opportunity to present its side of the story, so to speak, to the Commission. My principal mission was to attempt to avoid a situation where there would be a staff report and an injunctive action started without any opportunity for Hogan & Hartson and the ICC people to present their side of the matter.

I also told him that during the conversation Mr. Cooke had expressed many of the same reservations about Vesco and particularly had restate the perjury matter, indicating that they felt that Vesco had lied about the fact that he nor ICC had any interest in those Kornfeld shares in connection with the filing of that particular registration statement and that again there had been very serious doubts expressed as to whether or not there could be any resolution of the metter without some kind of injunctive order. In fact, I believe I am quite sure I told him that Mr. Cooke had flatly stated that from the staff's standpoint at least any settlement or any discussion of settlement would have to include or have to contemplate the issuance of an injunctive order.

Q Did you subsequently have a meeting with members of the ICC staff --

THE COURT: You mean any settlement with ICC?

THE WITNESS: Yes, sir.

THE COURT: An injunctive order against ICC?

THE WITNESS: Yes, sir.

Q Did there come a time when you met with somebody at the Securities and Exchange Commission with Mr. Vesco?

A I met in late May with Mr. Vesco and Mr. Vesco and Mr. Cooke. I subsequently in the latter part of June met with Mr. Vesco, Mr. Thorpe of Hogan & Hartson, Mr. Sporkin of the staff and Mr. Cooke.

Q Taking the meeting in the latter part of May 1st, can you tell us what was said at that meeting? This was at the SEC in Washington?

A Yes, sir. It was at Mr. Cooke's office.

Q What did Mr. Cooke say and what did Mr. Vesco say at that point?

THE COURT: This is in May of '73?

THE WITNESS: May of '72, your Honor.

THE COURT: All right.

A I don't remember the conversation verbatim but --

THE COURT: Were you there as Mr. Vesco's lawyer?

THE WITNESS: I was there as ICC's lawyer, your

Honor, as far as I was concerned. I might say that I was never retained by Mr. Vesco personally on this particular matter although, and this goes to the question of privilege and I would like the record clear on this point, there was a subsequent letter in late June that followed the meeting that I had that Mr. Thorpe attended, a letter by Hogan & Hartson to the SEC staff noting my appearance as an associate counsel with Hogan & Hartson. The way the letter was worded --

THE COURT: Let us come to that in a moment. Let's stick to the main meeting.

THE WITNESS: All right. I am somewhat concerned about the entire context of the testimony.

THE COURT: If you think you ought to go into the June meeting with respect to the context, go ahead.

THE WITNESS: It is not the June meeting, it is what followed the June meeting and Mr. Vesco or least Vesco, Inc. is represented here today. I would be more comfortable if I could explain that there was never my personal retainer on this matter between Vesco and me. B ut thatletter that was filed by Hogan & Hartson did say that I would be appearing as associate counsel with them in behalf of ICC and Vesco. This was not within the contemplation of what I considered my responsibilities to be

jqbr Sears-direct 62

but I do know or did find out subsequent to that letter being filed that Vesco personally was also a subject of the SEC investigation. I had not know that early on in the matter.

THE COURT: You thought it was just ICC?

THE WITNESS: Yes, sir.

Q Was this letter sent after the June meeting?

A It was sent after the June meeting, yes, sir.

Q Can we get back to the May meeting now and get what was said there.

A Yes. The May meeting centered around certain things which were going on. I was a member of the ICC board of directors at the time. Certain things were going on with respect to the de-Vescoizing project of ICC. We also discussed the redemption of $9-1/2 million in Eurobonds, a large portion of which were held by IOS Entities, as I recall. We discussed the sale of Value Capital Limited. Those specific things were discussed but there was also some discussion about the matter of the alleged perjury by Vesco and the status of the Kornfeld shares at the time or in connection with their filing of the registration statement by ICC.

THE COURT: What did you understand at that point that the alleged perjury related to?

jqbr Sears-direct 63

THE WITNESS: The alleged perjury as I understand it then and as I understand it now, to the extent it alleged, referred to certain statements made by Vesco in depositions that were taken during the course of the private order of investigation or the private investigation wherein the SEC staff allegedly felt that Vesco had lied when he said that neither he nor ICC or any ICC affiliate had any interest in or control over those 6 million Kornfeld shares as of the time the registration statement was filed.

THE COURT: Those were preferred shares?

THE WITNESS: I am not sure about that, sir. I think they were.

THE COURT: 6 million of IOS shares in one form or another?

THE WITNESS: Yes,sir. There was also some discussion in that connection, in that context about an offer that Vesco had made tothe SEC and which he made to Mr. Cooke at that time to make George Felip, a man who was connected with I think the Bank Contrade in Europe, to make him available for interview somewhere in Italy because Mr. Vesco took the position that Felip had absolute knowledge of facts that would absolve him of any alleged perjury and there was some discussion about that with Mr. Cooke at that meeting as well. There were probably other

things discussed that escape me at the moment.

THE COURT: The last point was that there was discussion by Vesco with Cook about the possibility of making Felip available to the SEC, is that right?

THE WITNESS: Yes, sir. The discussion or the controversy in that matter was involved in whether he would be available for sworn depositions.

THE COURT: All right.

Q Did Cooke take the position he wanted Felip available for sworn depositions?

A Yes, sir.

Q Did Vesco say he would attempt to do that?

A My best recollection at the moment is that Vesco said that Felip took the position that he could not appear for sworn testimony because of some jeopardy which was never defined that he would be in with his bank employer if he did that.

Q You referred to a meeting in late June.

A There was another meeting in late June that involved Mr. Sporkin and Mr. Thorpe, Mr. Vesco, Miss and Mr. Cooke.

Q Where was that meeting held?

A That meeting was held, as I recall it, in Mr. Cooke's office at the SEC.

Q Can you tell us what was said at the meeting concerning the progress of the investigation?

A There was a very wide ranging discussion of the whole investigation and the status of it at that point. As I recall Mr. Vesco was complaining because he had been led to believe or all of us had been led to believe that the investigation was winding down some time in March or April. It was now the latter part of June, Vesco protested very vehemently in that regard. There was some dialogue between him and Sporkin which escapes me now but there was headed dialogue about staff attitudes and Vesco repeated allegations of harassment. There was some, as I recall it, discussion on Sporkin's part of things that were far from resolved and there was mention made of this possible perjury count and other things. In general, that was the nature of the discussion. There were some specific parts of the conversation that related to the Value Capital transaction, that is the sale of VCL and the sale of ICC -- that is the so-called Global deal in which Sporkin expressed some reservations and questions about the bona fides of those transactions. Basically that was the nature of the conversation.

THE COURT: Who was there?

THE WITNESS: Mr. Stanley Sporkin, Mr. Cooke,

jqbr Sears-direct 66

Bradford Cooke, Merle Thorpe of Hogan & Hartson and Vesco and myself.

THE COURT: Why were you there?

THE WITNESS: I actually had arranged the meeting through Mr. Cooke.

THE COURT: You were there representing whom?

THE WITNESS: ICC. It was a meeting which I asked for because I thought that it might be useful to have a meeting at the staff level and which Mr. Cooke had arranged.

Q Was there any discussion of alleged securities law violations?

A Yes, there was. There was some broad discussion about the possibility of settlement and there was again a repetition by Mr. Sporkin of what I had heard before through Mr. Cooke, that as far as the staff was concerned that any kind of settlement would have to contemplate an injunctive order against ICC. I say against ICC in the context of the whole investigation. I have always assumed that ICC was the principal thrust of the investigation.

MR. CARROLL I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. SHRAGER:

Q During the course of your activities in this

regard did you get the chance to discuss the matter of the SEC investigation with members of the firmof Hogan & Hartson?

A On many occasions, yes, sir.

Q Do you know whether or not the firm of Hogan & Hartson was ever asked for or delivered an opinion as to the jurisdiction of the SEC with respect to the IOS transactions?

A Yes, sir, I was shown a copy of that opinion when I have first became associated in the matter.

Q What was that opinion, sir?

A It was the opinion stated in a letter written I think back in March of 1971. It was the opinion of Hogan & Hartson that the SEC did not have jurisdiction and that was the position that was taken consistently throughout the matter as far as I know.

Q Was that the position taken by ICC and Hogan & Hartson as far as you know throughout the period of these various conversations you have told us about?

A Yes, that position was never abandoned as far as I know during my association of the matter.

THE COURT: Who was Hogan & Hartson in that?

THE WITNESS: The letter was written, as I recall it, to Chairman Casey of the SEC but it was -- that

opinion was expressed in a letter written to the SEC.

Q Mr. Vesco had copies of that letter, did he not?

A Yes, sir.

Q To your knowledge, did Hogan & Hartson ever inform Mr. Vesco that their opinion changed , that is throughout the period we are talking about?

A Not to my knowledge.

Q In the course of your discussions with people from Hogan & Hartson and Mr. Vesco after these various meetings that you have told us about was there any change in their opinion that the SEC did not have jurisdiction?

A As far as I am aware that opinion was one that they continued to maintain even at the time I became disassociated from the matter.

THE COURT: Hogan & Hartson's letter to the SEC was written on behalf of whom?

THE WITNESS: On behalf of ICC, as far as I know.

Q As far as you knew, Mr. Sears, it is a fact, is it not, that this was an investigation of ICC?

A That was my understanding, yes, sir.

Q And --

A I knew that the investigation grew out of certain matters relating to the filing of registration statements by

jqbr Sears-cross-redirect 69

ICC.

MR. SHRAGER: Nothing further, your Honor.

REDIRECT EXAMINATION

BY MR. CARROLL:

Q When you were initially retained by ICC, Mr. Sears, to assist in the handling of the SEC investigation were you told by anyone at ICC that there was no need to worry because there was no jurisdiction over the allegations contained or being investigated?

A Oh, no.

Q When you reported to Mr. Vesco the various meetings you had had as you testified to, did Mr. Vesco say "I am not concerned with that because there is no jurisdiction, Hogan & Hartson told me that."?

A No,s ir.

Q Do you know whether there was any sale by ICC of assets in June of 1972?

MR. SHRAGER: I object. This is beyond the scope of direct and it is improper redirect. It has nothing to do with anything.

MR. CARROLL: It has a lot to do with it.

THE COURT: I will allow the question.

A There was, yes, sir.

Q What happened in June of '72? That is as far

jqbr Sears-redirect-recross 70

as the IOS properties are concerned.

A I believe all of ICC's interest in the IOS entities was sold. I think that in June was the Global deal. If I am not mistaken all those assets were sold to an offshore entity. Global still confuses me but we commonly called it the Global deal.

THE COURT: Who is we?

THE WITNESS: I am speaking now as a member of the board of directors as the time it was referred to as the Global deal.

MR. CARROLL: I have no further questions.

RECROSS EXAMINATION

BY MR. SHRAGER:

Q You indicated, Mr. Sears, that after the April meeting Mr. Vesco reamined optimistic that Mr. Cooke could be convinced that the staff position was perhaps not the one that should be followed by the SEC.

A I think you characterized it somewhat differently.

THE COURT: Could you read the question back, please.

(Question read.)

THE COURT: Mr. Vesco was not at the April meeting.

THE WITNESS: No, sir.

THE COURT: He was not?

THE WITNESS: No, sir, he was not.

THE COURT: I am a little confused about the question. I take it what Mr. Shrager is asking you is: Was Mr. Vesco of this frame of mind as a result of what you told him about the April meeting, is that what you understood?

THE WITNESS: No, sir, what I said and what I assume was Mr. Shrager is getting at is what I said -- and I wouldn't characterize it quite that way -- what I said was that confronted with these allegations Vesco tended to discount them and brush them off and said that to him it indicated that the staff had brain-washed Cooke and he re-stated to me his own position which was that he had not lied nor had ICC any interest nor had he any interest in those shares at the time. He was restating I guesss his position as best as I can describe it.

THE COURT: What was his position? Did he state to you what he based his position on?

THE WITNESS: No, at thattime I am sure he did not give me details. I later learned some additional details but never really got the full story. I got mostly assurances by Vesco that they simply -- that those allegations were not true.

THE COURT: You knew some time in February, I take it, that Vesco told you he had met with Mitchell

and Mitchell --

THE WITNESS: I had met with Mitchell, not Vesco. Vesco never met with Mitchell.

THE COURT: And Mitchell, did he say to you that he thought a meeting with Cooke might be possible?

THE WITNESS: No. Mitchell had indicated to me in response to my direct query in that regard that he thought it might be possible for me to meet with Mr. Casey.

THE COURT: I see. I misread my notes.

You met with Mitchell and a few days later you reported to Vesco about your meeting with Mitchell?

THE WITNESS: That is right, yes,sir.

THE COURT: All right.

Q This sale to Globe, as you mentioned, Mr. Sears, and I will not try to figure out which Globe it is, was this part of the de-Vescoizing process you mentioned?

A Well, I would say yes. It was generally speaking though not so much de-Vescoization at that point, it was a matter of separating IOS and ICC. The de-Vescoization process I consider as relating to that period of time when Vesco was considering selling his shares and getting rid of his interests and when he was giving up official position with the company.

Q Rather this was part of the process of trying to

jqbr Sears-recross-redirect 73

separate out the ICC operation, what had always been the ICC operation from IOS?

A Yes, and that was part of a philosophy developed by the board, as I read it at that time and I was part of it.

Q Was this investigation that was being conducted by the SEC having effects upon the operations of ICC?

A Yes, it was. I was told that and I believed that to be the case.

Q What effects were there? Were they helpful or harmful?

A Harmful effects.

MR. SHRAGER: Nothing further.

REDIRECT EXAMINATION

BY MR. CARROLL:

Q The Globe transactions which have been characterized as an attempt to separate IOS from ICC, was there a rationale or reason behind that at all connected with the ICC investigation?

A Yes,sir, it was as far as the discussions involved in the board.

Q What was the thinking on that?

A There wer really two elements, as I recall it. One, there was the justification of the transaction from the

standpoint of the stockholders of ICC and at that point the justification was grounded basically and I believe a $7-1/2 million profit which was to be made. The other part of it which was perhaps the most important part from my standpoint at least as I remember not to discount the other, but the important part was the disassociation of ICC from IOS because of the obvious bad effect it had had and because the SEC investigation I thought then and other board memebers was doing to the company.

Q Was the thought that by means of the Globe transaction and the other transactions in which ICC got rid of the IOS assets that this would eliminate the SEC problems?

A Well, it was thought it would be helpful because if ICC was no longer connected, so to speak, there was some strong feelings and opinions expressed at that time that it would be helpful in that regard.

Q And these transactions took place before the June meeting at the SEC attended by yourself and Mr. Vesco?

A Yes, sir, they did.

MR. CARROLL: Nothing further.

MR. SHRAGER: I have nothing further, your Honor.

THE COURT: I am a little puzzled. I guess I know the answer to this question. But in response to a question

jqbr Sears- 75

by Mr. Shrager just a few moments ago you said that something was having a bad impact inside ICC. I think I heard you say that, is that right? W hat was that?

THE WITNESS: I believe that referred to the effect of the SEC investigation. Vesco constantly articulated the harmful effect it was having, bad publicity in the world press, particularly the financial press, the questions raised by creditors, the sensitivity of relationships with creditors that were being harmed by stories that were appearing.

These were things Vesco constantly talked about and I believed them to have some substance at the time and I believed other members of the board did as well.

THE COURT: So that the Globe deal, as you refer to it, was a way of attempting to take care of this question, this problem?

THE WITNESS: It was one justification for it, one reason for it as well, yes, sir. It was probably the one that was most articulated in the meetings that we had which involved that transaction and it led up to board approval, as I recall it.

THE COURT: Did the board understand where the $7-1/2 million was coming from?

THE WITNESS: Well, there was a breakdown and I

jqbr Sears- 76

confess that the details of it escape me now but there was quite a discussion about one aspect of it which I believe involved the tax indemnification involved in another transaction which was included as part of that. I know that the then accountant had somebody there --

THE COURT: That was separate. I just wondered whether the board understood where the 7-1/2 million was coming from as bearing on whether --

THE WITNESS: There was some discussion as to whether the moneys would be paid. At that meeting there was a heavy discussion about whether or not it was a bona fide arm's length deal. I remember Merrill Thorpe questioning Vesco at some length because Mr. LeBlanc was the principal in the company that was buying. There was some discussion about whether LeBlanc actually had the money or would be able to meet the obligations or whether Globe would be able to meet the obligations at that time.

THE COURT: Anything else?

MR. CARROLL: No, your Honor.

THE COURT: Thank you, Mr. Sears.

(Witness excused.)

MR. CARROLL: Mr. Polisar.

jqbr Polisar-direct 77

L E O N A R D M. P O L I S A R, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q Mr. Polisar, by whom are you presently employed?

A Baker Industries.

Q What is your position there?

A Vice president, secretary and general counsel.

Q Have you previously been employed by International Controls Corporation?

A Yes, I have.

Q When was that?

A From June of 1972 to the beginning of February 1973.

Q What position?

A Fice president and general counsel.

Q Reference has been made to de-Vescoization by a couple of witnesses here. Were you involved in any transactions which the effect was to be de-Vescoization of ICC?

A Yes, I was.

Q What transaction was that?

A Basically it was a proposed sale of the stock held by Vesco and/or Vesco & Co. to a company called Goldfield

jqbr Polisar-direct 78

Corporation or Goldfield Company.

Q Approximately when did these negotiations take place?

A Somewhere around September of 1972.

Q Did you personally participate in the negotiations?

A I participated in some of the negotiations.

Q Who else participated in these negotiations?

A There were Art Rothcoff from Hogan & Hartson, one or two other attorneys from Hogan & Hartson, John Doherty, Larry Richardson was present at some of them, I believe either Al Bloom or one of his associates from Lybrand was present at one or more of those meetings, maybe it wasn't Al. I am notsure. It is a long time ago. And the main negotiator was Vesco himself.

Q Do you recall any specific meeting, negotiating meeting?

A I remember there was a meeting that took place at ICC headquarters in Fairfield, New Jersey at which there were three people from Goldfield who were in attendance, one was James Setilli, Jr. and his son James Setilli III and an attorney whose name I don't remember for the. Then there was Vesco, again one or more attorneys from Hogan & Hartson, myself and Larry Richardson.

Q Were you present throughout the meeting?

A No. On at least one occasion the roomwas cleared of everyone except Vesco and James Setilli, Jr. who was the father of James Setilli III.

Q Was this meeting a negotiating meeting where various points were being negotiated back and forth?

A Yes, it was.

THE COURT: What was the date of the meeting?

THE WITNESS: Somewhere in September, possibly as late as October of '72. It might have been as early as August though I am not sure.

Q Was anyone from Vesco & Co. other than Mr. Vesco present at these meetings?

A No, they were not.

Q During the Goldfield transaction.

A No, they were not.

THE COURT: What was the name of the Setilli company?

THE WITNESS: Goldfield.

THE COURT: What business are they in?

THE WITNESS: Partially real estate. They were in a controversy --

THE COURT: What business were they in?

THE WITNESS: I think the main business was a controversy with General Host Corporation and one of the

jqbr Polisar-direct 80

major assets was the litigation against General Host. That is primarily all I can remember. I think they were in real estate as well.

THE COURT: Real estate located where?

THE WITNESS: Florida and elsewhere. I don't remember. The real estate at issue here was in the State of Florida. So that they owned very substantial amounts of acreage in Florida which was the subject matter of this transaction and I don't recall where else the real estate was or whastelse it was that they had done.

Q While you were employed by International Controls Corporation did your duties have anything to do with Vesco & Co.?

A I was familiar with the fact that Vesco and Co. was being organized and that shares of International Controls were being transferred to Vesco & Co.

Q Do you have a file on Vesco & Co. while you were at International Controls?

A At one time I had a file of Vesco & Co. while I was at ICC.

Q You said at one time. That indicates to me something else.

A Yes, while I was out of the office at some point in either December or January of 1972, December of '72 or

jgbr Polisar-direct 81

January or maybe the very beginning of '73 Mr. Vesco came down to my office and took that file from my secretary.

MR.SHRAGER: I have to object to this testimony. The witness got through saying it was while he was out of the office. This is obviously going to be hearsay testimony and it shouldnot be permitted.

THE COURT: Yes, Mr. Polisar, I sustain the objection.

Q Did a point in time come when the file was missing from your office?

A Yes.

Q Did you speak to Mr. Vesco about that?

A Yes, I did.

Q What did you say to him and what didhe say to you?

A I said that my secretary had informed me that he had taken a file from my office and I would like to return and he said he didn't have it with him but he would return it.

Q Did he ever return it?

A No, he did not.

MR. CARROLL: No further questions.

MR. SHRAGER: I have no questions, your Honor.

THE COURT: What was in thefile, Mr. Polisar?

jgbr Polisar- 82

THE WITNESS: To the best of my recollection there were several memos.

THE COURT: Were you counsel or the attorney for Vesco & Co., Inc.?

THE WITNESS: No, I was not.

THE COURT: Why did you happen to have a file on Vesco & Co., Inc. in your office?

THE WITNESS: Because the subject matter or the main asset of Vesco & Co. was ICC stock and it was felt that I ought to know what was happening to control of the ICC stock.

THE COURT: You say it was felt that youought to know. Who felt that you ought to know? Letme start over again.

Who initiated in your office a Vesco & Co., Inc. file?

THE WITNESS: I would assume Mr. Vesco.

THE COURT: Was the file there when you became general counsel?

THE WITNESS: No, it was not.

THE COURT: It was set up not by you?

THE WITNESS: No, I think what had happened was that I was told that Vesco & Co. was being organized by Mr. Stern, I believe, of the Hannoch firm and there were some

questions there that he wanted me to be aware of what was happening.

THE COURT: Who?

THE WITNESS: Mr. Vesco. Because it related to ICC stock.

THE COURT: So he wanted to keep some papers in your file or wanted you to keep in your file, which is it? He wanted you to keep in your file?

THE WITNESS: What happened was that at that point I kept the papers.

THE COURT: Papers that you received from Mr. Vesco?

THE WITNESS: That I received from Mr. Vesco and from Mr. Stern and there were occasions on which those papers were added to by Hogan & Hartson.

THE COURT: What were you supposed to do with those papers? Read them?

THE WITNESS: REad them, keep them.

THE COURT: And then do what? Just be aware of that?

THE WITNESS: To be aware of them, I think.

THE COURT: Were you ever asked to give any advice to Vesco & Co., Inc.?

THE WITNESS: No, I was not.

jgbr Polisar- 84

THE COURT: Under the circumstances were you surprised when you found that Mr. Vesco had directed or came down and took the file from your office?

THE WITNESS: Yes.

THE COURT: Why?

THE WITNESS: Because Vesco & Co. after that point was used as a vehicle in the Goldfield transaction as part of the de-Vescoization.

THE COURT: I understand that but I understood you to be telling me that Mr. Vesco asked you to maintain this file and put it in your office, I take it, as a matter of convenience so that you could be aware of whatever was in the file. It wasn't a matter that you were supposed to give advice on.

THE WITNESS: I don't think it was a question of please maintain a file as be aware of what had happened and in being aware of what was happening a file was built up. I am not sure if I am making myself clear.

THE COURT: Yes. It was being built up not because it was your responsibility to conduct or deal with those matters but rather because Mr. Vesco wanted a file built up. Maybe I am not stating it correctly but I gathered, as a matter of at least convenience and perhaps as a matter of keeping you informed, he had a file placed in your of-

jqbr Polisar- 85

fice. But it wasn't a matter that was really a part of your responsibility, as I understand what you are telling me. Maybe it was. I am not clear on this. Obviously I father from what you have said that you were at least surprised when the file was removed and I think you told me that you asked your secretary or you spoke to Mr. Vesco, one or the other, and asked him to send it back and he said he would and it never came back, which suggests to me that you thought you shouldhave the file. This is what I am trying to get at. If it was just a file placed in your office as a matter of convenience and a way of keeping you informed but it wasn't anything that you had to deal with I would suppose the owner of the file could remove it whenverhe wanted to. But your point is that you thought you had -- well, you obviously didn't feel that was quite the situation.

Can you spell out for me a little further why you felt as you did?

THE WITNESS: Basically I guess because at the time that it was taken my instructions to my secretary had been that no papers were to be removed from my office by Mr. Vesco and she was very agitated when I came back and she said that he had taken that file from her and I guess my attitude was simply that any file in my office should not have been taken regardless of what file it was.

THE COURT: Did you speak to Vesco or did she speak to Vesco?

THE WITNESS: I spoke to Vesco.

THE COURT: You asked him to return the file?

THE WITNESS: Yes, sir.

THE COURT: And he said he would?

THE WITNESS: Yes, sir.

THE COURT: And it didn't come back?

THE WITNESS: No, sir.

THE COURT: That was when, can you place the time?

THE WITNESS: Probably in January would be my guess.

THE COURT: This wouldbe of '73?

THE WITNESS: '73.

THE COURT: You left the company in February?

THE WITNESS: That is right.

THE COURT: How did that come about?

THE WITNESS: In a board meeting in January the controller Gary Benjamin was removed from his position by Mr. Vesco and the majority of the board against my opposition and several others. At the time that was done I stated to the board that I thought it was being done in retribution for his work against Mr. Vesco and I objected strongly to that and said that if he was fired by this board

I would submit my resignation. He was fired and I submitted my resignation.

THE COURT: Gary who?

THE WITNESS: Benjamin.

THE COURT: All right.

MR.SHRAGER: Nothing, your Honor.

THE COURT: Thank you very much.

(Witness excused.)

MR. CARROLL: Your Honor, I have nothing further at this time. I would like to make a couple of comments.

First, we have attempted to subpoena Miss Shirley Bailey here by serving her with a subpoena duces tecum. We have been unsuccessful at this point although we have had someone on it for the past week. I understand Miss Bailey is out of the country and therefore outside the subpoena power ofthe Court. We did serve a subpoena duces tecum on the firm of Hannoch, Weisman asking for various documents. I would like to mark a copy of both of the subpoenas or the subpoena served on Hannoch, Weisman as an exhibit. I will mark the original.

MR. SHRAGER: Before we do that, I think we should point out that Item 16 on that subpoena Mr. Carroll and I had some discussions about it and we agreed that it should be deemed to read "All correspondence between Vesco & Co., Inc.

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or its attorneys concerning Vesco & Co., Inc. and Robert L. Vesco." The way it is originally written would call for all correspondence between my firm and any other attorneys for Vesco & Co. and Mr. Vesco whether or not it was related to the subject matter of this action and I informed Mr. Carroll that I thought it was rather broad and he agreed.

(Plaintiff's Exhibit 10 was marked for identification.)

MR. CARROLL: The addendum to the subpoena requests the production of 16 items or categories of documents. Mr. Shrager has responded to the subpoena by producing what looks to be the minute and stock book of Vesco & Co., Inc. and I am not sure, I haven't had a chance to look at what the other documents are. I do note that what Mr. Shrager has produced does not include what we feel probably are the most important documents as faras what we hope to show and that is cancelled checks and checkbooks, et cetera, of Vesco & Co. and financial statements of Vesco & Co. so that we could put in some proof as to exactly what activities Vesco & Co. has engaged in if there have been such activities in the past two years or so.

But we do not have those documents. I would like to have the opportunity to look through the documents which have been produced to see if there is anything in there that

we would like to offer as additional exhibits.

THE COURT: What is your position, Mr. Shrager? Why haven't you produced the other documents?

MR. SHRAGER: Because I don't have them.

THE COURT: They don't exist or you don't have them?

MR. SHRAGER: I don't have them. Mr. Carroll could have engaged in discovery. They controlled setting up this thing. If they wanted to take an appropriate procedure to use discovery to see what there is I assume Vesco & Co. as a defendant in this actionwould have to conform.

THE COURT: Do I take it your position is that you hve produced everything thatyou are required to produce under the subpoena?

MR. SHRAGER: Yes, sir, I have produced everything in my possession or my firm's possession called for under the subpoena.

THE COURT: Can I see the subpoena?

MR. CARROLL: Yes, sir.

THE COURT: Is there anything else you want to say?

MR. CARROLL: I would like to say that I feel that we have more than met our burden of proof on the various issues presented here and I think it is incumbent upon Vesco to produce documentary proof as to what activities they have

jqbr 90

engaged in up to this point.

THE COURT: I wondered about that. I am addressing myself now only to the subpoena. As to whether or not you have met your burden of proof otherwise, that is an entirely different question.

As to the documents you have subpoenaed are you suggesting you have met your burden by subpoening the lawyer?

MR. CARROLL: No, your Honor. We have subpoenaed every one we could subpoena. We tried to subpoena Miss Bailey. She was apparently out of the country.

THE COURT: Does Vesco & Co., Inc. have a corporate address thatyou can serve?

MR. CARROLL: With process but not as far as a subpoena. I don't know of a corporate office for serving a subpoena duces tecum.

THE COURT: They don't have an address?

MR. CARROLL: I am looking at a tax return now and the address is a post office box in Denville, New Jersey.

THE COURT: Doesn't a New Jersey corporation --

MR. SHRAGER: It is a Delaware corporation, your Honor.

THE COURT: Don't they provide that you can serve the Secretary of State?

MR. CARROLL: With process, your Honor, but the Secretary of State will not accept the subpoena.

THE COURT: Your position is that you tried to get the documents, you have done everything you can to get them and they aren't here so what?

MR. CARROLL: The only person within the subpoena power of the Court as far as we could tell would be Miss Bailey who does have a residence in New Jersey but apparently has not bee there for quite some time and we were unable to serve her. We did the only thing we had left which was to serve the attorneys who attended the incorporation and this is what we have received. Most of the correspondence we have seen in this case relating to Vesco & Co. carries an address of Hannoch, WEisman. You will notice on the SEC filings we have --

THE COURT: A least a couple of them.

All right.

MR. SHRAGER: I would like to suggest at this time that we deem that I have made a motion to dismiss and that we reserve everything on it and for me to call a witness at this time.

THE COURT: Let us not deem it. You are making a motion and I will reserve on it.

MR. SCHRAGER: Yes, sir.

jqbr Bloom-direct 92

I would like to call Mr. Bloom at this time.

A L A N K. B L O O M, called as witness by defendant Vesco & Co., Inc., having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHRAGER:

Q What is your profession?

A I am an accountant.

Q Are you a member of any firm?

A Yes. J.H. Cohen & Company.

Q How long have you been a member of thatfirm?

A Since March 1st,1973.

Q Before that were you a member of any firm?

A Yes.

Q What firm was that, sir?

A Coopers and Lybrand, formerly Lybrand, Ross Brothers and Montgomery.

Q How long were you with them?

A Approximately 15 years.

Q Are you a certified public accountant?

A Yes.

Q Are you acquainted at all with Mr. Robert L. Vesco?

A Yes.

Q When did you first meet him, sir?

A Late 1966.

Q Was your contact with him professional?

A Yes,it was.

Q In the course of relating to Mr. Vesco did you have any occasion to get involved on any estate planning you performed for Mr. Vesco?

A Yes.

Q Would you tell us briefly the circumstances? Also the date.

A Some time in the latter part of 1967 I met with Mr. Vesco to discuss with him just tax planning in general. At that time I probably, as we did with many of our clients, introduced him to the fact of estate planning.

MR. CARROLL: I object to this. He says probably did. I don't think that is proof that he did tell him what he is going to say.

THE COURT: Overruled. Go ahead.

Q Continue please.

A I acquainted him with the fact of bringing his will up to date, of doing all the necessary things that we suggested to many of our corporate clients and to the executives of those clients.

Q At that time was ICC a corporate client of

Lybrand?

A Yes, it was. He said "What should I do about an attorney?"

I told him or I suggested to him Milton Stern of the firm of Hannoch, Weisman, Stern & Besser. He said it was fine with him.

Q Did a meeting subsequently take place between Mr. Stern, yourself and Vesco concerning estate planning?

A Yes, sir.

Q When was that?

A The latter part of '67.

Q Can you give us a brief idea of what was discussed at that time?

A The matter of first importance of course was to get Mr. Vesco's will up to date. The second matter which was discussed with him was a rather complieted estate planning technique which is quite commonly done in situations such as his where an individual who has accumulated some wealth and anticipates a much greater increment in wealth through his corporation, by virtue of his corporation increasing in value over a period of time, we suggest to these people and did so to Mr. Vesco that he consider forming a personal holding company. We would normally recapitalize in a situation like this but of course we had public ownership so we couldn't

jqbr Bloom-direct 95

recapitalize the company. What we instead did was suggested to him that he form a personal holding company and that he attempt to freeze his present interest in International Controls by exchanging his ICC stock for securities of a new company. The securities of the new company would in effect be a preferred stock which would have a redemption value equal to the then present value in ICC and he would also take back voting stock which would still enable him to keep control of the company and at the same time, constitutionally thereto, his children would exchange their stock interest for non-voting stock. The non-voting stock though would be issued at a much greater proportion than the voting stock. So consequently if the plan is effected properly a greater proportion of the future value of the company would inure to the benefit of the children and not to Mr. Vesco.

This has the benefits of freezing his estate and passing on the future increment in value of ICC to the second generation.

THE COURT: This was in 1967?

THE WITNESS: The plan was proposed in late 1966 in a general form to Mr. Vesco.

Q Did you also discuss with Mr. Vesco at that time the creation of a trust for the benefit of the children?

A I believe we might have but it was not -- it was secondary to it, one, the will and, two, the recapitalization or the formation of the personal withholding company.

(Defendant Exhibit A was marked for identification.)

THE COURT: Did he have a will at that time?

THE WITNESS: I don't recall, your Honor. If it was it was a rather simple one, I would assume.

THE COURT: But you don't know?

THE WITNESS: I don't recall.

Q Mr. Bloom, let me show you Defendant Exhibit A for identification and ask you if you can identify that?

A Yes, I can.

Q Would you tell us what it is, please.

A Essentially it was a letter which was prepared by Milt Stern and written to Bob Jeffers, who was a partner at Hogan & Hartson. Mr. Jeffers represented ICC before the Securities and Exchange Commission and other matters pertaining to ICC and at the same time, of course he represented Mr. Vesco.

In essence, Mr. Stern outlined --

MR. CARROLL: I would like to see the letter before he reads it into the record.

THE COURT: Yes.

MR. SHRAGER: I have no objection. In fact, if Mr. Carroll is willing I will shotcut the testimony by offering the exhibit.

MR. CARROLL: This indicates a copy to Mr. Bloom and I would like him on a voir dire question whether he got a copy of that letter.

THE WITNESS: Yes.

MR.CARROLL: No objection.

xx (Defendant's ExhibitA was received in evidence.)

Q Mr. Bloom, what happened next with respect to this holding company concept as far as you know?

A Not much for quite a period of time.

Q What happened? Was a reply received from Hogan & Hartson?

A Over a year later.

Q Was the consept implemented at that time?

A No, it was not.

Q There has been some reference on stipulation put into the transfer in 1971 by Vesco and his wife of three parcels of real estate to certain trusts.

Are you familiar with that transaction?

A Yes, I am.

Q Do you know the purpose of that transaction?

A Yes.

Q First of all, can you describe the salient details of that transaction for us?

A The transaction was set up as a part sale, part gift. In effect, the parcels of real estate were sold to trusts which were created for the benefit of Mr. Vesco's children for a consideration.

Let me go back and say that the value placed on the property I believe was $365,000. The properties were sold to the trust for $220,000 for which promissory notes of the trust were taken back.

The difference between the $220,000 sale price and the $365,000 value was deemed a gift and reported as such for U.S. gift tax purposes.

Q This was the property that was the resident home of the Vescos?

A And the surrounding properties.

Q Was there a lease in connection with this transaction?

A Yes, there was.

Q Do you recall the terms of the lease?

A Vaguely.

Q Who held the lease?

A It is just, I believe, that the Vescos, I think Mrs. Vesco primarily, had a right to reside there.

jqbr Bloom-direct 99

I forget if it was 20 years, but some period of time. I assume there might have been an option to renew but I don't recall the details.

THE COURT: This was a lease from the trustee of the trust bank to Mrs. Vesco?

THE WITNESS: That is right. It might have been Mr. and Mrs. Vesco. I think she had some additional rights.

THE COURT: Who were the trustees?

THE WITNESS: Richard Clay, Shirley Bailey and Ralph Dodd.

Q Was this transaction basically an estate planning concept?

A Yes. It was all in line with a view toward passing on property to the children.

Q This morning Mr. Carroll also put in a stipulation concerning transfer of funds to trust bank accounts. In connection with these, you indicated that there were notes given by the trust to the Vescos.

A Yes.

Q And there was a rental payment to be made by the Vescos to the trust?

A That is correct.

Q Do youknow whether or not of your own knowlddge this money referred to in this stipulation, some

jqbr Bloom-direct 100

26,000 was deposited, whether that came from rent?

A I believe that was a rental payment.

Q If you don't know tell us.

A All I can say is I believe it was but I cannot be absolutely certain.

THE COURT: I thought you were talking of trusts of bank accounts.

MR. SHRAGER: One of the stipulations that went in this morning, what Mr. Carroll means to show a pattern of transfer, was the transfer of some $26,000 or a deposit of some $26,000 into bank accounts maintained by the trust and what I am attempting to show is that the source of those funds were part and parcel of this estate planning condept that I am getting testimony on.

THE COURT: Who selected the trustees of the $365,000 real estate trust, Clay, Bailey and Dodd?

THE WITNESS: Mr. Vesco.

Q Let us go back to the stipulation we were talking about this morning. You recall that stipulation concerned some shares of Fairfield General stock and some shares of ICC stock. Prior to 1969 did the children of Robert Vesco own shares of ICC?

A Yes, they.

Q Did there come a point in time when Fairfield

General was spun off from ICC?

A Yes.

Q Approximately when was that?

A February 1972.

Q Did the children of Mr. Vesco receive then shares of Fairfield General on account of shares of ICC they owned prior to 1969?

A Yes.

Q And those were the shares that were covered in part of that stipulation this morning, do you remember the odd numbered ones?

A Yes.

THE COURT: They got whose shares in exchange?

MR. SHRAGER: By virtue of their prior ownership of ICC stock they received shares of Fairfield General when it was spun off from ICC.

THE WITNESS: Fairfield was a wholly owned subsidiary, your Honor, of ICC and in early February, I believe, of '72 they spun off Fairfield General to the existing shareholders of ICC of which the custodian accounts, the children's accounts, were shareholders. They received shares of Fairfield by virtue of their ownership of shares in ICC.

THE COURT: All right.

Q Did there come a point in time when the holding company concept was reactivated?

A Yes.

Q Approximately when was that?

A I believe in late 1971.

Q What was done with respect to activating this concept?

A I believe in February 1972 Librand, Ross Brothers & Montgomery prepared a ruling request which was submitted to the national office of the Internal Revenue Service at that time asking that an exchange by Mr. Vesco and the children's trusts or the custodian accounts for the trusts what would transfer shares, that this exchange for securities of a newly formed company, Vesco & Co., Inc. would be a tax free exchange.

xx (Defendant's Exhibit B was marked for identification.)

Q Let me show you Defendant's Exhibit B and ask you if that is the ruling request?

A Yes, it is.

Q And this is a document that you have seen before?

A Yes, it is.

Q Is this a copy of the original?

A Yes, it is.

(Defendant's Exhibits C, D and E marked for identification.)

MR. CARROLL: No objection.

(Defendant's Exhibit B was received in evidence.)

Mr. Bloom, was an answer received from the IRS?

A Yes, it was.

Q Was the ruling granted?

A Yes.

Q Let me show you what has been marked as Defendant's Exhibit D for identification.

Is that the ruling from the IRS?

A Yes, it is.

Q Did there come a point in time when a supplemental ruling was requested?

A Yes.

Q I show you Defendant's Exhibit C for identification. Is that the supplemental ruling?

A Yes.

Q I show you Defendant's Exhibit E for identification. Is that the grant of the supplemental ruling requested?

A Yes.

Q All of these documents, Mr. Bloom, are copies. Have you seen the originals of these?

A Yes.

Q Are these true copies of the originals?

A Yes, they are.

THE COURT: Is there any objection, gentlemen?

MR. CARROLL: I don't think there will be any obection, your Honor. We have never seen them before. We would like to look at them.

THE COURT: Is this your last witness, Mr. Shrager?

MR. SHRAGER: Yes, sir.

THE COURT: Let us take a few minutes then.

(Recess.)

MR. SHRAGER: Without objection I offer Exhibits C, D and E.

xx (Defendants' Exhibits C, D and E received in evidence.)

Q Was B received?

MR. BUTOWSKY: No objection to B.

THE COURT: I have it.

Q Mr. Bloom, can you describe for the Court, please, the reason why this estate planning concept was developed, that is the holding company, what it seeks to accomplish?

MR. CARROLL: I object to the extent it seeks to say why Mr. Vesco set it up.

THE COURT: I suppose he can't give us Mr. Vesco's reasons but he can tell us what Mr. Vesco said to him.

Q And why you recommended this transaction and what you said to him and what he said to you.

A Well, this concept, the use of the personal holding company or in cases of closed corporations, which we weren't, recapitalizing, is quite common. As I indicated, if a company, if the owners of a company can foresee a situation where the value of a company may increase dramatically over a period of time that one of the ways in which they can reduce their estate costs or potential estate costs is to try to freeze the present value of the company and pass the future growth onto the next generation and this was precisely the situation which we saw here. Mr. Vesco was a dynamic individual. He had great aspirations for the company. I think at the time we saw him the stock of the company was selling at about $10 a share, something in that range. These were the go go days in the stock market. He was looking toward 50, 100 as the case may be. We thought it an excellent idea under the circumstances a possibility to freeze his interest which was roughly at that time, I guess, 1 million shares at $10.

THE COURT: What was the stock worth then?

THE WITNESS: I think about $10 a share.

THE COURT: It was on the American Exchange?

THE WITNESS: Yes, it was. Hold on, I think they applied for listing I think in early 1968. I think it was over-the-counter and they applied for listing in early 1968 and I think it became or listed,I believe,around May 1968.

THE COURT: In any event, over-the-counter had a market value?

THE WITNESS: Yes, it did, your Honor.

THE COURT: And you think it was around $10?

THE WITNESS: I believe so. So he already had a value, an indicated paper value, of about $10 million before any discounts, of course.

At that time, if we could recapitalize or set up the personal holding company then we had the opportunity of freezing his value of the estate through a preferred stock issuance and pass on the future stock growth of the stocks to the children.

THE COURT: When you say freeze, you mean income tax?

THE WITNESS: Potential estate costs. How this works is simply he takes back a preferred stock. He exchanges his common stock interest for a preferred stock which has

a redemption value equal to the then present interest in the company. He also has or causes to have issued to him a voting stock but at a much lower percentage of the total common stock of the company. He children simultaneously transferred in their shares of stock.

Q When the stock increases the common stock benefits and the common stock that had go in effect to this children would increase tremendously in value, assuming that the increase happns, and when he dies, he and his wife die, there is no estate tax payable on the increase?

A That is correct. It is only on the value of the preferred stock. That is absolutely right.

Q There was a delay, Mr. Bloom, in implementing this plan. Why was that, sir?

A Well, the transaction for one person or another had to be reviewed extensively by Hogan & Hartson.

THE COURT: What do you mean for one reason or another?

THE WITNESS: They were SEC counsel to the company.

THE COURT: Don't tell us what you think.

Do you know why? Did they tell you why they had to review it?

THE WITNESS: All that Mr. Vesco said was that it had to be reviewed by Hogan & Hartson.

THE COURT: What was the SEC problem?

THE WITNESS: Hogan & Hartson was SEC counsel for the company. Hogan & Hartson spent the better part of the next year doing a scholarly research job and submitted an extensive memorandum.

MR. CARROLL: I object to this.

THE COURT: I would like to hear about this.

A They spent a better part of the next year doing a scholarly research job on this project and submitted an extensive memorandum.

THE COURT: Which project?

THE WITNESS: The project of the personal hodling company.

THE COURT: I don't know whether it was scholarly or not. I am prepared to assume it was a scholarly research job.

THE WITNESS: They submitted an extensive memorandum on this entire subject matter, I believe, in August 1968, excuse me. August 1969 which was over a year from the time Mr. Sterns' letter went to Mr. Jeffers of Hogan & Hartson. It was their opinion that they hated to see a young man, and I think these were the words in the memorandum, they hated to see a young man take an irrevocable step at that point of transferring his entire interest into a new company, in ef-

fect freezing his present worth. They were also very concerned that the company or that a favorable ruling could not be obtained from the Internal Revenue Service although it was both Mr. Stern's and Lybrand's opinion that such favorable ruling could be obtained.

Q This brings us up to '69. Was a ruling requested at that time?

A No.

Q Why not?

A I don't know.

Q The project was reactivated back in 1971. What occasioned the reactivation?

A Essentially from the time that we first got involved with Mr.Vesco the stock rose dramatically. I think it was from about ten to a high of about $50. It then began to come down just as dramatically and I believe although I am not certain of the amount that the stock in late 1961 was selling --

Q '71?

A Yes, '71. It was selling for a much reduced amount, someplace probably under $10 or thereabouts.

Q What didthat hav e to do with the decision to implement the plan?

A We looked at it as against the proper timing to

possibly go ahead with a similar plan since the stock decrease and there was the hope or expectation that the stock could come back again and reach similar heights.

This was the time then to go ahead and implement the plan.

Q The final revenue ruling was received on July 21, 1972. How soon thereafter was the trasnfer made?

A Immediately.

MR. SHRAGER: That is all I have, your Honor.

THE COURT: You say the stock came down from 50 to something less than 10. If I remember what you said just a moment ago, you said it was then looked upon as a good time to go ahead. Looked upon by whom?

THE WITNESS: By Mr. Vesco and his tax advisers.

THE COURT: Who were whom?

THE WITNESS: Milton Stern of Hannoch, Weisman and myself of Lybrand.

THE COURT: The project, I takeit, was reactivated in late '71?

THE WITNESS: That is correct.

THE COURT: By whom?

THE WITNESS: I believe it was Mr Vesco.

THE COURT: Who told you that the project re-activated?

THE WITNESS: Mr. Vesco.

THE COURT: What did he say?

THE WITNESS: I think just in the context --

THE COURT: What did he say?

THE WITNESS: I don't remember his exact words except that he mentioned the fact that he would like to rekindle that idea, meaning the personal holding company concept, that idea that we had presented to him a few years ago.

THE COURT: Did you talk with him about it again?

THE WITNESS: Yes, we did.

THE COURT: What did he say in those conversations?

THE WITNESS: Just generally that the idea we had explained to him back in 1967 he thought was a good idea. He thoughtthat if we could obtain a favorable ruling for him that he would most certainly go through with a transaction like that even though there had been objections to it by Hogan & Hartson in their memorandum in 1969.

THE COURT: which was based on the fact, as you recall it, that he was too young to go into something like this?

THE WITNESS: That was one reason. The other reason was that they didn't believe we could get a favorable ruling from the IRS. We agreed absent a favorable ruling from

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the service that the transaction should not be undertaken.

THE COURT: Was Hogan & Hartson's view any different in late '71-'72 from what it had been in '68?

THE WITNESS: They were still against the transaction. They really did not feel that we could get a favorable ruling.

THE COURT: Were they against it because of the other point too? He was too young.

THE WITNESS: I don't necessarily believe that was the case then.

THE COURT: As I understand the plan Mr. Vesco would get preferred stock.

THE WITNESS: As I understand the plan Mr. Vesco would get preferred stock.

THE WITNESS: That is correct.

THE COURT: In exchange for what?

THE WITNESS: For his common stock.

THE COURT: All of his common stock?

THE WITNESS: Yes. But he would also get back common stock as well.

THE COURT: In the company?

THE WITNESS: In the new company, Vesco & Company.

THE COURT: And thatcommon stock would have voting rights?

THE WITNESS: That is correct.

THE COURT: Voting rights with respect to what?

THE WITNESS: In Vesco & Co., Inc.

THE COURT: Just Vesco & Co., Inc.?

THE WITNESS: That is right.

THE COURT: Does that mean he would have voting rights with respect to all of the common stock -- wait a minute. The holding company would own or would issue preferred stock and common stock, is that right?

THE WITNESS: Two types of common stock, a voting common and a non-voting common.

Q What would support those various classes of stock?

THE WITNESS: The quid in the transaction was the receipt from Vesco and his children of the ICC common stock. Vesco took back preferred stock and also voting common stock. The children took back voting common stock and all of the non-voting common stock.

THE COURT: So Vesco had voting stock and I guess all of the voting stock in Vesco & Co. --

THE WITNESS: I don't believe so. I think he took back 51 per cent of the voting stock. He took back 60 per cent of the voting stock, excuse me.

THE COURT: Who got the rest?

THE WITNESS: Maybe we can get clarification.

MR. SHRAGER: We have the stock book.

THE COURT: He had more than 50 per cent, in any event?

THE WITNESS: To be accurate, I think he took back 40 per cent. I think his wife took 20 and I think each of the four children took back 10 each. I am not certain of that. Between him and his wife they had voting control.

THE COURT: Of Vesco & Co., Inc.?

THE WITNESS: That is right.

THE COURT: What did that mean with respect to ICC stock?

THE WITNESS: It meant Vesco & Company had the right to vote ICC stock.

THE COURT: Which they started out with. Whatever they started out with --

THE WITNESS: On the formation of the company.

THE COURT: The formation of Vesco & Co., Inc.?

THE WITNESS: That is right.

THE COURT: The voting stock of Vesco & Co., Inc. continued to control in terms of ability to vote all of the ICC stock which Vesco and his family owned before the transaction?

THE WITNESS: Yes.

THE COURT: You hesitate.

THE WITNESS: If you are saying Vesco & Company could vote the stock and that the shareholders of Vesco & Co. in effect controlled that right --

THE COURT: That is all I am saying.

THE WITNESS: Yes.

MR. CARROLL: The loan back affidavit, Exhibit 3, indicates that Vesco got a majority of the voting common stock and the stock book produced this morning indicates that Mr. Vesco got 52 shares or 52 per cent of the voting common stock of Vesco & Co.

THE COURT: I think there are 100.

MR.CARROLL: Yes, and Vesco got 52 and his wife and children got 49.

CROSS EXAMINATION

BY MR. CARROLL:

Q Mr. Bloom, I believe you indicated in your testimony that this personal holding company concept was a fairly common type of estate planning device.

A Yes. That or the recapitalization. The recapitalization is used in the closed corporation. The personal holding company had to be used here because we had a public company. We had many people.

Q When you are using the personal holding company concept is it quite common to receive a revenue ruling?

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A Absolutely.

Q Is it quite routine to get such a ruling?

A Yes.

Q Did anyone from Hogan & Hartson tell you why they did not think you would get such a ruling?

A There are several reasons. I think the most significant of which was that they were concerned that there might be a requirement thata business purpose, a corporate business purpose might be required to obtain a ruling.

THE COURT: Would that be a corporate business purpose of Vesco & Co, Incl or of ICC?

THE WITNESS: Thatis part of the difficulty. In this case it would probably be Vesco & Co., Inc. The feeling of the service might have been that we could not show a corporate business purpose as opposed to an individual purpose which was to reduce the impact of future estate costs.

Q What would be lost by applying for a ruling if you wanted to implement such a plan? You wouldn't be prejudiced in any way, wouldyou?

A You mean we wouldn't go ahead with the plan?

Q Yes.

Q Most tax practitioners are adverse to going ahead in requesting rulings where they are not fairly

certain that they are not going to get them.

Q But this is a routine device which is used under the proper circumstances?

A Yes.

Q And it is routine to obtain a revenue ruling?

A Yes.

Q You mentioned that one of the problems Hogan & Hartson had was that Vesco was a young man who was taking an irrevocable step. Was this an irrevocable step?

A Well, once the securities were transferred in it becomes then difficult to get them out again without tax cost. At some point in time there was concern that there was going to have to be tax ost paid on the appreciation. I think that this was there -- although I don't recall exactly what their memorandum stated I do recall that there was this discussion toward the end of their memorandum about making a step like this at a point in time in his life, at that particular point in time.

Q Isn't it true that Fesco owing the majority of the votint stock of Vesco, Inc. could in effect liquidate Vesco & Co at any time?

A Yes, but it would have to distribute out securities.

Q It would have a tax consequence?

A Yes.

Q But he could do it?

MR. SHRAGER: I object to the question as far as it calls for alegal conclusion. We have 52 percent as opposed to -- well, in New Jersey you need a bigger percentage and I have no idea what Delaware is and I don't think this witness does either.

THE COURT: I will overrule the objection because I don't think your objection goes so much to the form and content of the answer as to what it means. I will take it with your objection in mind.

Q Mr. Bloom, is J.H. Cohen & Company the accountants for Vesco & Co., Inc.?

A We have been retained by counsel, Hannoch, Weisman, Stern & Besser to represent Vesco in various tasks matters, one of which being preparation of certain tax returns, et cetera.

Q When you say Vesco, Robert Vesco?

A Yes.

Q You have prepared a tax return for Vesco & Co. for the fiscal year ending June 30, 1974?

A Yes. We have. We did.

Q Did your firm prepare the tax return for the previous fiscal year for Vesco & Co.?

A Yes, we did.

Q Do you have that with you?

A No, I don't.

Q Is it available?

A Yes.

Q When was the last time you looked at that tax return?

A I would assume at the time we prepared that one.

MR. CARROLL: Can I have this marked as a plaintiff's exhibit.

THE WITNESS: Which would have been probably last fall.

xx (Plaintiff's Exhibit 11 was marked for identification.)

MR. CARROLL: I offer it in evidence.

MR. SHRAGER: No objection.

xx (Plaintiff's Exhibit 11 was received in evidence.)

THE COURT: Do you know who signed this?

THE WITNESS: I believe I did. I was a member of the firm.

THE COURT: Did somebody sign it as an officer of Vesco & Co., Inc.?

THE WITNESS: Yes, I believe so.

THE COURT: Who was that?

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THE WITNESS: I think it was Shirley Bailey. I can't be absolutely certain of that.

THE COURT: Who are the officers of Vesco & Co., Inc.?

THE WITNESS: At that time it was Tricia Vesco and Shirley Bailey.

THE COURT: Do you think maybe Patricia Vesco signed it?

THE WITNESS: It is possible.

THE COURT: You weren't present when it was signed?

THE WITNESS: No, your Honor.

THE COURT: I mean by an officer of Vesco & Co., Inc.

Has there been a change in the officers since then?

THE WITNESS: I am not absolutely certain but there may have been. I am not sure of that.

THE COURT: What may have happened?

THE WITNESS: In the back of my mind Patricia Vesco may no longer be president but I am not up on the details.

THE COURT: Do you have any notion as to who may be president?

THE WITNESS: It may be their son, Daniel, who attained his majority. I might be guessing here.

THE COURT: If you are guessing tell us so.

THE WITNESS: I am not certain.

THE COURT: What is the basis for the figures in this return as to the value of the assets?

THE WITNESS: Well, the most significant asset, of course, would be the investment in ICC stock.

THE COURT_ How do you arrive at a value for stock?

THE WITNESS: Could I see the return?

THE COURT: Yes, it has been received in evidence although it hasn't been marked in evidence.

THE WITNESS: This, in effect, is the value of the preferred stock, the redemption value of the preferred stock which was placed on the 2,513 shares at $1,000 per share at the time of the exchange.

The value of the common stock I am not quite as certain as to how that was arrived at. I assume -- the first one is not an assumption, the stock was arrived at as a redemption value. The $145,000 for the common stock was probably the fiar market value or the over-the-counter market quotation for the stock at the time of the exhcnage also.

THE COURT There is a question here on form -- well, it is Schedule K of Form 1120. Did any corporation, individual partnership trust or association at the end

of the taxable year, which I guess is the year ending June 30 1974, own directly or indirectly 50 per cent of your voting stock and the answer checked is yes.

Do youknow what that refers to?

THE WITNESS: Is there another schedule attached to that, your Honor?

THE COURT: No. Maybe there should be.

THE WITNESS: Here it is, your Honor. This is the reply to that particular question.

THE COURT: It means Patricia J. Vesco as custodian or trustee for the four children.

Q Mr. Bloom, when you prepared this tax return did you have any books and records of Vesco & Co. in your possession?

A Well --

Q Checkbooks, books of account.

A There were very few transaction. They were furnished to us by Mrs. Bailey.

Q By Mrs.Bailey?

A That is correct.

Q That is Shirley Bailey, one of the defendants in this case.

A Yes.

Q Did you say your firm prepared the '73 return, the return for the year before this?

A That is correct.

Q Did you receive any books or records in connection with the preparation of that return?

A Yes, they were furnished to us by Mrs. Bailey.

Q Did she furnish actual books and records or just information?

A I think what we do is we sit down with her and as she goes through the checkbook we take down the pertinent information for use in preparing the return.

Q Do you recall what information you obtained from the checkbook in connection with this particular statement?

A Just receipts and disbursements. I don't think there were any receipts but any disbursements made.

Q What bank was the checkbook for? Where was the account?

A I don't recall exactly as to what account. In fact, I am not certain whether it was a domestic or foreign account at this point.

Q Do you recall any of the specific disbursements or receipts for either this return or the past return?

A I don't recall anything in the way of receipts. As far as disbursements, I believe there may have been some taxes, for example Delaware franchise tax to pay.

There may hve been some insurance to pay, miscellaneous disbursements, nothing of great significance as far as dollars go.

THE COURT: I take it you had an automobile.

MR. CARROLL: I was getting to that.

Q As the Court noted there is an automobile listed on this tax return.

THE COURT: I guess it's an automobile, it says transportation equipment, cost $5,280.

A I don't recall the circumstances as to why the automobile got on the books or how it got there. I believe that it might have been formerly owned by Mrs.Vesco. The other possibility is that it was just purchased for use around the properties but I am not really sure of that.

Q What properties?

A The whole complex.

Q That property didn't belong to Vesco & Co., did it?

A No, it belonged to the trust.

THE COURT: Which complex?

THE WITNESS: The land transferred by Mr. and Mrs Vesco to trust created for the benefit of their children.

Q Do you know when the automobile was purchased?

THE COURT: It says on here 1973, at least it was acquired in March 1973.

THE WITNESS: It might have been transferred by Mrs. Vesco. I really do not recall the detail.

Q Do you know what type of automobile is referred to there?

A No.

Q Do you know if in fact she transferred the automobile, if she received anything for it, payment, stock?

A At this point I don't recall.

Q Do you have any records in your possession which would indicate how the automobile came to be owned by Vesco & Co.?

A Not in my possession, no.

Q Do you know who would have such records?

A Possibly, yes.

Q Who would that be?

A Mrs. Bailey.

Q Do you know where Mrs. Bailey is?

A I believe she is in Nassau.

Q Do you know where she lives in Nassau?

A Not exactly. I don't know the address.

Q When was the last time you had occasion to speak with Mrs. Bailey?

A I believe it was about two months ago.

Q What did you have occasion to speak to here about?

THE COURT: Is this relevant?

MR. CARROLL: I don't know, your Honor. It is if it has something to do with Vesco & Co. As I mentioned, we have tried to subpoena her.

THE COURT: Did you speak to her on the phone?

THE WITNESS: Yes, your Honor.

Q Was she in Nassau at that time?

A When I spoke with her last, I believe so.

THE COURT: Did you talk to her about the matters relating to the operation of Vesco & Co., Inc.? Yes or no?

THE WITNESS: No, I don't think so.

Q Vesco & Co. does have a bank account, a checking account at least, is that correct?

A Yes.

Q Do you know where they receive the funds to deposit it into that account?

A I can only assume --

THE COURT: Don't assume.

THE WITNESS: I can't be certain then.

Q Have you ever prepared a financial statement for Vesco & Co.?

A No.

Q Do you know what assets Vesco & Co. owns other than the ICC stock and now the automobile?

A No.

Q Was the automobile reflected on the prior tax return, do you know?

A What date was it acquired, your Honor?

THE COURT: March 1973,it says.

THE WITNESS: It should have appeared on the 1973 return. I think we have a June or July year end.

Q You don't know where that automobile is today, do you?

A I think it ison the Vesco -- in Boonton, New Jersey.

Q You don't now what type of automobile it is?

A My recollection is that if it is not Mrs. Vesco's car or a car owned by her formerly that it might be a Land Rover which is a type of Jeep to be used around the house.

Q On the tax return for the prior year do you recall if there were any other payments made by Vesco & Co. reflected on the tax return other than the Delaware Tax?

A Relatively minor. I don't recalltheir exact nature.

Q Do you have any records of Vesco & Co. in your

possession at this time or your firm's possession?

A Not that I know of.

Q Other than these tax returns.

A No.

Q Do you know Mr. Clay?

A Yes.

Q have you met him?

A Yes.

Q Do you know where he is today?

A Yes.

Q Where?

A Nassau.

Q When is the last time you saw Mr. Clay?

A I am guessing, your Honor, I think it is about a year ago.

THE COURT: What was he?

MR. CARROLL: He was a director of Vesco & Co. and he is one of the trustees listed and these trusts.

MR. SHRAGER: I don't think he is either any more.

THE WITNESS: I am not certain but the last time was, I would say, about a year ago.

THE COURT: Do we know whether or not he is a director or trustee?

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MR. CARROLL: As far as I know he is a director of Vesco & Co. from the last document I have seen.

MR. SHRAGER: He is definitely not a trustee of any of the trusts. Whether or not there has been subsequent elections of directors or not or if he is formerly resigned, I don't know. I really don't.

Q Do you know who the trustees are presently on these trusts?

A Yes.

Q Who are they?

A Shirley Baily, Ralph Dodd and I think Daniel Vesco.

Q Daniel Vesco?

A Yes.

Q Do you know who Mr. Vesco's children came to own the ICC stock that was ultimately transferred to Vesco & Co.?

A predecessor to International Controls was a company called Captive Seal which was a small electronics company which Mr. Vesco had an interest in. This dates back prior to December 19, 1966. Prior to that date Mr. Vesco made a transfer to each of these children of 100 shares. It might have been a custodianship arrangement, in fact I am sure it was, of 100 shares of Captive Seal then on December 19, 1966 was merged into a company called ICC New Jersey at which time the children exchanged their Captive Seal stock

for,I believe, 773 shares of ICC New Jersey stock. ICC New Jersey simultaneously, the same day, was merged into a company called Cryogenics which was a Florida corporation. They exchanged -- Cryogenics immeidately changed its name to International Controls. The children exchanged their 773 shares, each of them and received back approximately 11,600, whatever the number, of ICC or International Controls stock for their ICC New Jersey stock. It was a simultaneous merger on December 19th. The gift though by Mrs.Vesco, if it was in gift form and I don't know that, but the stock ownership records show that the children each owned shares of stock in the old Captive Seal company.

Q Are you aware of any assets owned by Vesco & Co. oth than the ICC stock and this automobile?

A No.

Q Are you aware of Vesco & Co. ever owning any other a[illegible]t?

A No.

Q Are you aware of any business Vesco & Co. ever transacted?

A No.

Q Where are the originals of these tax rulings and requests for rulings, if you know?

A The originals would probably be either in the

Washington or Newark offices of Lybrand or Coopers & Lybrand.

Q When is the last time you saw them?

A The originals?

Q Yes.

A I would imagine some time in 1972.

Q I notice that Exhibits B and C refer to the transfer of 800,000 shares, approximately 800,000 shares of ICC stock to Vesco & Co. and Exhibits D and E appear from reading to relate to a circumstance that 300,000 shares were going to be transferred. I don't see anything in those exhibits that recite what the change in circumstance was. Can you enlighten us on that?

A I do not recall.

Q But at some point between April 1972 and July of 1972 Mr. Vesco changes his mind and decided instead of 800,000 he was only going to transfer 300,000 shares?

A That is right.

Q At some point subsequent to that he changed his mind again and transferred the entire 800,000 shares?

A He made a second transfer.

Q On December 29, 1972, is that correct?

A That is correct.

Q Did you speak with Mr. Vesco in December '72

concerning this additional transfer of 400,000 shares of ICC stock?

A I did not.

Q You worked for Lybrand when Lybrand was the accountant for ICC, is that correct?

A Yes, I was a member of the firm.

Q Coopers & Lybrand? Were you a partner?

A Yes.

Q Were you in charge of the Lybrand or ICC account at Lybrand?

A The tax portion of it.

Q How long were you associated with the ICC account while you were at Lybrand?

A From late 1966 until I resigned which was February 15, 1973. Excuse me. I am sorry. Lybrand resigned from the International Controls account on November 6, 1972 so it was until that date.

THE COURT: November 6, '72?

THE WITNESS: Yes, that was the last date in which Lybrand was active in the ICC account.

Q Did you have many direct dealings with Mr. Vesco over that period of time?

A Yes.

Q On a very frequent basis?

A It wasn't that frequent because of his far flung activities.

Q To what extent were you familiar with Mr. Vesco's other business activities other than his personal estate planning?

A Well, I was quite involved iwth the corporate matters.

Q WEre you familiar with the acquisitions and various deals Mr. Vesco was putting together?

A Yes.

Q Were you consulted on the tax aspects of those deals such as the IOS transactions?

A Some portions of it.

Q Were you involved at all in the negotiation of those deals or in the consummation of those deals, the closing of the deals?

A No.

MR. SHRAGER: I object to this line as to relevancy.

THE COURT: I would think so. Mr. Bloom has already told us however that he wasn't involved and he doesn't know about them. But I do think it is irrelevant.

Q Mr. Vesco was a quiet forceful person, was he not?

A Yes.

Q He got things done in a hurry if he wanted to get things done in a hurry, did he not?

A Yes.

Q And people under him worked some pretty long hours sometimes to get things done according to schedule, did they not?

A Yes.

Q If he had his mind on getting something done it was usually done fairly quickly, was it not?

MR. SHRAGER: Objection.

THE COURT: Sustained.

Q Did you personally speak with someone at Hogan & Hartson about their scholarly research job?

A Yes.

Q Who did you speak with there?

A I believe I spoke at some point with Al Spada who I believe prepare the memorandum. This memorandum was finalized some time in 1969?

A That is right.

Q Did you ever tell them that this was a routine thing that was done and why were they spending so much time on it?

A He understood it was routine but when we are

talking this magnitude of money he wanted to make sure he took proper care of his client.

THE COURT: You mentioned, Mr. Bloom, that the three trustees of the Vesco children's trusts today are Daniel Vesco, Shirley Bailey and who is the third one?

THE WITNESS: Ralph Dodd.

Q Is someone currently preparing the tax returns for Vesco & Co., Inc.?

A Their year end is June coming upon us.

THE COURT: Today.

THE WITNESS: I think it is 6/30.

THE COURT: Today.

THE WITNESS: We will, of course, get to it in due course.

THE COURT: That is anybody in Vesco & Co., Inc. been in touch with you about preparing a tax return for the year ending June 30, 1975?

THE WITNESS: Not to date.

THE COURT: As far as you know you are expected to prepare one for that period and you are going to go about it in due course?

THE WITNESS: That is correct.

THE COURT: When is it due?

THE WITNESS: It is due 2-1/2 months after the end

jqbr Bloom-cross 136

of the year. That would be September 15th.

THE COURT: I notice that this one for the year ending June 30, 1974 asked for an automatic three months extension of time until December 15th. An automatic three months extension of time.

THE WITNESS:Yes,you get an automatic extension, the first extension.

MR. CARROLL: I am finished except I would like to take a look at the tax return for a minute.

THE COURT: I am really just being curious, but does that mean you don't to file anything after 2-1/2 months, you just can wait for another three months before you file?

THE WITNESS: All you have to do is submit the automatic extension. You don't have to give any explanation. They will grant it to you.

Q This tax return, Exhibit 11, Mr. Bloom, refers to cash of $10,790. Do you know where that cash was located, do you recall?

A I am not absolutely certain of that.

Q Where did you get that figure?

A Mrs. Bailey would have furnished that to us.

Q Did you see any books or records to back up that figure or verify it?

A I don't believe so. That I think she probably

furnished to us.

Q Did you attempt to verify whether there was actually that much money in a bank account somewhere in the name of Vesco & Co.?

A No, it is not necessary. For example, when we prepare personal returns of many of our clients, whether it be corporate or individuals, much of the information is furnished to us without verification by us.

Q Has Mrs. Bailey been in contact with you about preparing the return for this current year?

A Not yet.

Q Do you know who Mrs. Bailey works for?

A I know it is an individual down there. I don't recall his name or the name of the concern.

Q In the Bahamas?

A That is right.

MR. CARROLL: I am done.

MR. SHRAGER: I have nothing further of this witness.

THE COURT: Thank you, Mr. Bloom.

(Witness excused.)

MR. CARROLL: Mr. Shrager at one point indicated that he may have had some distinctions in his mind when he got a subpoena directed to his firm as to what he was

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required to produce and I would like to ask him whether or not he has produced all documents called for by the subpoena that are in the possession of his firm, whether called Vesco & Co. documents or Hannoch, Weisman, Vesco & Co. documents. I don't know if there was a distinction made.

MR. SHRAGER: I have no idea where Mr. Carroll's quandries come. If a subpoena is served upon me or upon my firm we produce and we have produced every document called for in the subpoena which we have, with the possible exception of anything privileged but I can tell the Court I went through this and the way it was worded I don't think there was anything privileged that was called for.

MR. CARROLL: I think in view of the fact that we have attempted to subpoena Shirley Bailey and she is a defendant in the case here and has been served with the summons, it may be appropriate --

THE COURT: She has been served?

MR. CARROLL: She has been served and she is a defendant in the case. Not with the subpoena though.

It may be informative for all of us if Mr. Shrager could attempt to arrange to have Miss Bailey produce these books and records of Vesco & Co. which all evidence points to the fact she has them in her possession, checkbooks especially and we can find out what kind of business

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Vesco & Co. does.

THE COURT: What makes us think that there might be some business that is engaged in?

MR. CARROLL: If there is we should know that and if there isn't we should know that.

THE COURT: Don't we know from the income tax returns?

MR. CARROLL: We can tell what they did in the year 1973. They paid taxes and drove a car.

THE COURT: What about that, Mr. Shrager?

MR. SHRAGER: If this Court directs Vesco & Co. through me to make checks available I will see what is availab and produce them if possible.

THE COURT: I so direct.

MR. CARROLL: A last bit of housekeeping, your Honor.

We do have a minute book and some other documents and we would like the opportunity to go through these an figure if there is something to offer in there.

THE COURT: All right. We can do that some time after today.

All right. I would like to hear from Mr. Shrager as to what he may be able to find and produce for us promptly. Do you think you can let Mr. Carroll know in the next couple of days?

MR. SHRAGER: Certainly before the week is out.

THE COURT: At least let him know whether or not you are going to be able to find anything and if so, if you are going to be able to when it is likely to be available.

MR. SHRAGER: I will come back to Mr. Carroll with a timetable with what reasonable expectations we have.

THE COURT: I have I think all of the exhibits here. Do counsel want them?

MR. CARROLL: Could I make copies of mine and I will make copies to Mr. Shrager and I will get the original back.

MR. SHRAGER: I will do the same for Mr. Carroll.

THE COURT: I have everything I think from 1 to 11 except 10. What there an Exhibit 10?

Off the record.

(Discussion off the record.)

THE COURT: I am anxious to dispose of this matter promptly and I would appreciate your resolving these unanswered and open questions as quickly as possible and letting me know. I don't suppose in light of the briefs which I have received and the instructions I have gotten from the Court of Appeals that I need any briefs from counsel but of course I will be happy to hear fromyou if anybody thinks I need further enlightenment. The only question

I really have in mind at the moment and it isn't much of a question is whether Blue Chips casts any doubt on the Court of Appeals' view in their opinion or whether it tends to support Judge Mulligan.

Otherthan that I don't feel the need for an further briefs. But I will be happy to hear from counse if they think they want to tell me something more.

MR. CARROLL: I really have nothing further that I ca say in a brief other than to attempt to marshal the facts for you.

THE COURT: I don't think that is necessary.

MR. SHRAGER: I would like to read the transcript first.

THE COURT: All right. Somebody is going to let me know approximately about this other matter.

MR. BUTOWSKY: We are going to submit additional exhibits from the minute book.

MR. CARROLL: Could we mark what Mr. Sharager has produced under the subpoena as exhibits for identification?

THE COURT: I think that would be useful. You don't need me for that.

MR. CARROLL: No, your Honor.

THE COURT: Thank you, gentlemen.

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Elmer Anthony Sticco	25	43	50	
Harry L. Sears	51	66	69 73	70
Leonard M. Polisar	77			
Alan K. Bloom	92	115		

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Plaintiff	Identification	In Evidence
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Post-Hearing Memorandum of defendant Vesco & Co., Inc.

(1043a - 1051a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	)	
Plaintiff,	)	73 Civ. 2518 (CES)
-vs-	)	
ROBERT L. VESCO., et al,	)	
Defendants.	)	

POST-HEARING MEMORANDUM

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,)

Plaintiff,)

-vs-) 73 Civ. 2518 (CES)

ROBERT L. VESCO, et al,)

Defendants.)

POST-HEARING MEMORANDUM

Preliminary Statement

This post-hearing memorandum is submitted in opposition to plaintiff's application to satisfy judgments it received against Robert L. Vesco by reaching stock of International Controls Corp. (hereinafter referred to as "ICC") owned of record by Vesco & Co., Inc. This memorandum will primarily be concerned with the evidence or lack of evidence submitted. For a discussion of the applicable law, the Court is respectfully referred to Vesco & Co., Inc.'s (hereinafter referred to as "Vesco & Co.") memorandum of law submitted at trial. That memorandum demonstrates that in order to prevail, ICC would have to satisfy its burden of proving that Vesco & Co. was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the

immunity it carries and that Vesco & Co. is entitled to every reasonable presumption in its favor.

It is respectfully submitted that the creation of Vesco & Co. was motivated by estate tax considerations and that the actions of the parties were consistent with the business realities in existence at the time and not inconsistent with the corporate form created. There was absolutely no evidence submitted concerning Robert L. Vesco's personal financial condition and any conclusion that Robert L. Vesco sought to defraud creditors is therefore unwarranted. Lastly, there was absolutely no showing that the transfers were made to avoid the alleged liabilities that are the subject of this judgment. The judgment which has been entered in this case concerns charges for an airplane which were not liabilities; in fact, for the most part, had not been incurred by the time of the creation of Vesco & Co.

The Evidence

The Purpose of Vesco & Co.

ICC apparently accepts the proposition that the idea for the creation of Vesco & Co. was as a result of estate planning conducted for Robert L. Vesco in late 1967 and early 1968. As Mr. Bloom testified, the purpose of the formation of the corporation was to freeze the value of the ICC stock at the time of the transfer

in Robert L. Vesco while providing that any future appreciation of the stock after transfer would inure to the benefit of the Vesco children and pass to them free of any estate taxes (Tr. 94, 95).

ICC emphasizes the close personal relationship between and among Robert L. Vesco and the other officers and directors of the corporation; which close personal relationship is not disputed. However, the fact is that every closely held corporation is subject to the exact same criticism. The officers and directors are always close friends or family, but such fact does not militate against the existence of a valid corporation, if, as here, there is a valid purpose for the creation of the corporation. Obviously, there cannot be one set of rules for most people and another for Robert L. Vesco and the other defendants in this action.

For the discussion that follows, it is importnat to understand the economics of Vesco & Co. Robert L. Vesco transferred stock having a value of $2,500,000.00 to Vesco & Co. in return for all of the preferred stock of the company and a portion of the voting common stock. The preferred stock had a liquidating preference equal to $2,500,000.00. Thus, unless the stock of ICC held by the corporation had a value in excess of $2,500,000.00, the only person who had a viable financial interest in Vesco & Co. was Robert L. Vesco.

The Transfers to Vesco & Co.

As noted, ICC seems to accept Mr. Bloom's testimony as to the purpose of the formation of Vesco & Co. as that concept was propounded in 1967, or 1968; however, it seems to contend that the timing of the creation of the company is suspect.

Mr. Bloom explained the delay in implementing this estate planning device. He detailed for the Court the necessity for an Internal Revenue Service ruling and Hogan & Hartson's opposition to the program. Most importantly, Mr. Bloom pointed out that the ICC stock greatly appreciated in value and that the creation of the company was not feasible, would not serve the function for which it was designed, if transfers occurred while the value was high. It was not until 1971 when the market price of ICC stock fell back to around $10.00 a share that the concept became viable (Tr. 107-110).

And, Mr. Bloom testified that Mr. Vesco reactivated this estate planning device in 1971, not 1972, the period covered by Mr. Sears' testimony. The exhibits submitted, in particular the first Internal Revenue Service ruling request, antedate the period covered by Mr. Sears' testimony, clearly undercutting ICC's only attempt to show that the creation of Vesco & Co. was not motivated by legitimate tax considerations.

Significant in Mr. Sears' testimony was his statements that Robert L. Vesco was optimistic that he would prevail before the

Securities Exchange Commission (Tr. 57, 71) and that Robert L. Vesco had received an opinion from Hogan & Hartson, eminent Securities Exchange Commission practitioners, to the effect that the Securities Exchange Commission did not have jurisdiction over the issues being investigated (Tr. 67, 68). Additionally, as Mr. Sears' testified, the thrust of the investigation was against ICC, not Robert L. Vesco, and concerned the I.O.S. investment (Tr. 66, 68 and 69).

The Operation of Vesco & Co.

ICC produced as witnesses Elmer Sticco and Leonard Polisar, both of whom testified that in late 1972, or early 1973, Robert L. Vesco entered into negotiations with third parties purportedly on behalf of Vesco & Co. And, why should he not negotiate for Vesco & Co.; he was a stockholder and an officer. John Doe, an owner of an incorporated grocery store, often negotiates to sell the stock of the corporation or its principal asset. Obviously, such representation of a corporate entity cannot be evidence that the corporation is a sham unless these are special rules for Robert L. Vesco and his family.

At the time of the negotiations referred to above, the Securities Exchange Commission's action against ICC and others was pending. The market value of the stock of ICC was extremely low and only Robert L. Vesco's preferred stock of Vesco & Co. had

any value. And, a review of plaintiff's Exhibit 14, the minutes of the February 11, 1973 meeting, indicate appropriate corporate action confirming Robert L. Vesco's negotiations on behalf of the corporation.

ICC also points to the guarantee by Vesco & Co. of a loan to Robert L. Vesco. Exhibit P-14 referred to above explains that transaction. In view of the low value of the ICC stock and the consideration received for the guarantee and pledge, from Vesco & Co.'s point of view the transaction made good business sense.

CONCLUSION

It is respectfully submitted that ICC's application should be denied. Plaintiff has totally failed to make any showing that the creation of Vesco & Co. was motivated by any attempt to avoid the alleged liability to plaintiff for which plaintiff has secured a judgment, albeit without any proof having been presented to support the default judgment. All that has been submitted is inuendo and surmise based almost entirely on Robert L. Vesco's notoriety. Credible evidence has been submitted to demonstrate that Vesco & Co. was formed for legitimate estate planning purposes. ICC has failed to satisfy its burden of proof to the contrary and the within application should be denied.

Respectfully submitted,

HANLOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By _____
JAMES J. SHRAGER
A Member of the Firm

DATED: July 17, 1975.

Post-Hearing Memorandum of plaintiff.

(1052a - 1070a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- : 73 Civ. 2518 (CES)

ROBERT L. VESCO, et al., :

Defendants. :

----------x

POST-HEARING MEMORANDUM

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

ROBERT L. VESCO, et al., :

Defendants. :

----------x

73 Civ. 2518 (CES)

POST-HEARING MEMORANDUM

Preliminary Statement

By Order to Show Cause dated May 20, 1975, plaintiff International Controls Corp. ("ICC") moved for an order the effect of which would be to assist it in the enforcement of its outstanding judgments against Robert L. Vesco in the total amount of $5,422,466.72.* As part of the relief sought, ICC is attempting to reach 846,380 shares of ICC stock held of record by Vesco & Co., Inc. ("Vesco & Co."). On June 30, 1975 a hearing was held solely for the purpose of determining whether ICC is entitled to enforce its judgment against

* On July 12, 1974 ICC obtained a judgment in this action against Vesco in the amount of $2,422,466.72. On September 11, 1974 ICC obtained a $2,900,000 judgment against Vesco in another action pending in this Court entitled International Controls Corp. v. Robert L. Vesco (74 Civ. 1558).

Vesco by proceeding against that ICC stock.

The sole purpose of this memorandum is to marshall the evidence adduced at the June 30, 1975 hearing, evidence which, we respectfully submit, demonstrates beyond a doubt that ICC is entitled to reach the ICC stock held of record by Vesco & Co. either under the theory that Vesco & Co. is a mere alter ego of Robert L. Vesco or the theory that the transfers by Vesco to Vesco & Co. of his ICC stock was fraudulent as to ICC and should, therefore, be set aside.

ICC's legal argument and discussion of authorities is contained at pages 17 through 29 of its previously submitted memorandum of law in support of its motion and will not be repeated here. Rather, the court is respectfully referred to said memorandum.

The Evidence

The Formation of Vesco & Co., Its Officers, Directors and Shareholders

Vesco & Co. was organized as a Delaware corporation on July 12, 1972 (Tr. 5*, Pl. Ex. 4). According to the minute

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*References are to pages of transcript of June 30, 1975 hearing and exhibits received in evidence during the course of the hearing. Plaintiffs Exhibits 12 through 22 are exhibits taken from the minute and stock book of Vesco & Co. and are being transmitted to the court with this memorandum. As the court will recall, the minute book was produced at the hearing pursuant to a subpoena served on Vesco & Co.'s attorneys and it was agreed at the hearing that the minute book would be made available to counsel for ICC and that documents therefrom could be introduced into evidence.

book of Vesco & Co., the first meeting of directors was held on July 21, 1972 at which time 52 shares of Class A Voting Common Stock and 1,838 shares of Preferred Stock were issued to Robert Vesco in exchange for 350,000 shares of ICC (Pl. Ex. 12). Also, at that time Vesco exchanged 20,292 shares of ICC stock he owned as custodian for his four children (5,073 shares for each child) for 42 shares of Class A Voting Common Stock and 12,000 shares of Class B Non-Voting Common Stock of Vesco & Co. which were issued to Vesco as custodian for each of his four children (12 shares of voting common and 3,000 shares of non-voting common being held for each child) (Pl. Ex. 12, 20, 21, 22). Thus, at that time Vesco owned all of the preferred and 52% of the voting common stock of Vesco in his own behalf and 48% of the voting common and 100% of the non-voting common stock of Vesco & Co. as custodian for his four children.

According to a Unanimous Consent of Directors in Lieu of a Special Meeting (Pl. Ex. 13), Vesco transferred an additional 449,912 shares of ICC stock to Vesco & Co. on December 29, 1972 and in return Vesco & Co. issued to Vesco 675 shares of Vesco & Co. preferred stock. At the same time Vesco & Co., in exchange for 26,088 shares of ICC held by Vesco as custodian for his four children (6,522 for each child), issued 8,000 additional shares of Class B Non-Voting

common shares to Vesco as custodian (2,000 for each child).

At some point in time, it appears that the voting common and non-voting common stock of Vesco & Co. held by Vesco as custodian for his children was cancelled and a like number of shares were issued to Patricia Vesco, Vesco's wife, as custodian (Pl. Ex. 21, 22). However, in view of the December 29, 1972 transfers referred to above it is clear that this transaction did not occur until after December 29, 1972* and that Vesco himself continued as the sole shareholder of Vesco & Co. (either in his own right or as custodian for his children) until at least sometime after that date.

Originally Vesco was the president and a director of Vesco & Co. (Pl. Ex. 1, 12). The other officers and directors included Shirley Bailey, Vesco's personal secretary, who was also Vesco & Co.'s Secretary/Treasurer, and Richard E. Clay (Pl. Ex. 1, 2). Both Mrs. Bailey and Mr. Clay are named defendants in this action. It appears, however, that at some point Mr. Vesco resigned his position as president and a director of Vesco & Co. and was replaced by his wife.

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* Although the stubs of the certificates reissued to Patricia Vesco indicate an issue date of July 21, 1972 (Pl. Ex. 21(e)-(h), 21(m)-(p) and 22(f)-(i)), it is clear that the stubs were back-dated and that the stock was issued to Mrs. Vesco sometime after the end of 1972.

Vesco & Co.'s Business

According to its attorneys, Vesco & Co.'s "basic activity . . . consists of its ownership of the stock in ICC" (Pl. Ex. 4). Also, in a Schedule 13D filed by Vesco & Co. with the Securities and Exchange Commission in September of 1972 (Pl. Ex. 1) (which was signed by Vesco as president of Vesco & Co.), it was stated that Vesco & Co. had "no significant activity or assets other than its ownership of securities of ICC". However, it appears from Vesco & Co.'s minute book and documents contained therein (Pl. Ex. 14-17) that in February of 1973 Vesco & Co., at Vesco's request, guaranteed a $1,000,000 personal loan received by Vesco from Trident Bank Limited, a Bahamian Bank and as security for said loan put up all of its assets, i.e., all of the ICC shares transferred to it by Vesco. It is significant that the documents relating to the loan were signed on behalf of Trident Bank by Norman Le Blanc, as president. Mr. Le Blanc is also a named defendant herein and the hypothecation agreement relating to that guarantee (Pl. Ex. 18) provided that acceptable escrow agents for the purpose of holding said ICC shares included Bahamas Commonwealth Bank Limited and Columbus Trust Limited, both of whom are defendants herein, as well as The Royal Bank of Canada.

The Alleged Estate Planning Purpose
Behind the Formation of Vesco & Co.

Vesco & Co. has taken the position that it was formed as an estate planning device and that, therefore, the transfers to it of the ICC stock by Vesco cannot be questioned. Although the evidence indicates that Vesco & Co. might well have been conceived and presented to Vesco as an estate planning device, in late 1967 (Tr. 94, Def. Ex. A), we respectfully suggest that the evidence clearly demonstrates that estate planning played no part in Vesco's ultimate decision to form Vesco & Co. and to transfer to it 846,380 shares of his ICC stock. In this regard, it is noted that the only person who can really testify as to why Vesco & Co. was formed was the person who caused it to be formed, i.e., Robert Vesco. Of course, Mr. Vesco did not appear and testify at this hearing.

Viewed in its best light, the evidence merely shows that at a time in 1968, an estate planning technique, which included the formation of a corporation such as Vesco & Co., was presented to Vesco and that at the time such a plan could have been viewed as a legitimate estate planning device. However, we respectfully submit that the evidence clearly demonstrates that, when it was formed in July of 1972, Vesco & Co. served no legitimate estate planning purpose.

Indeed, Vesco himself admitted in the Schedule 13D he signed and filed with the SEC with respect to Vesco & Co. (Pl. Ex. 1) that there were reasons other than estate planning reasons behind the formation of Vesco & Co. In that document, which he signed as president of Vesco & Co., Vesco stated, under the heading "Purpose of Transaction":

> "Corporate ownership of a portion of the ICC shares held by the transferors was deemed to be a more desirable business and administrative arrangement than direct ownership. In addition, receipt by Mr. Vesco of shares of both preferred and common stock of VCI was deemed advantageous from an estate planning and administration viewpoint."

It was clear from Vesco & Co.'s own witness, Alan K. Bloom, that Vesco & Co. formed no legitimate estate planning purpose when it was formed in July of 1972. Thus, Mr. Bloom testified that he first discussed estate planning with Vesco some time in the latter part of 1967 (Tr. 94). At that time the idea of forming a personal holding company was suggested to Vesco in order to freeze Vesco's present interest in ICC by exchanging his ICC stock for preferred and voting common stock of the new company (Tr. 95). It is important to recall that Mr. Bloom testified that such an estate planning device is used when the owners of stock feel or can foresee a situation where the value of a company may increase dramatically over a period of time and that, in 1968, Vesco was

looking for the ICC stock to go from $10 per share as high as $50-$100 per share (Tr. 105). According to Bloom, the personal holding company device would permit this anticipated future appreciation to inure to the benefit of the owners of the common stock of the holding company (Tr. 106-107).

Mr. Bloom conceded that there was a delay of approximately four years between the time the plan was submitted to Vesco and the actual formation of Vesco & Co. He attributed approximately one year of this delay to the fact that "the transaction . . . had to be reviewed extensively by Hogan & Hartson", ICC and Vesco's then attorneys and that following this review Hogan & Hartson submitted an extensive memorandum some time in August 1969* (Tr. 108). Bloom testified that Hogan & Hartson was concerned that the formation of a personal holding company was an irrevocable step which they hated to see a man as young as Vesco take and that they were concerned that a favorable tax ruling would not be obtained (Tr. 108-109).

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* We note that although the initial letter to Hogan & Hartson outlining the plan was produced and received in evidence (Def. Ex. A) and although the correspondence between the IRS and Vesco's accountants relating to tax rulings was produced and received in evidence (Def. Ex. B-E), the Hogan & Hartson memorandum was never produced.

In view of Vesco's continued control over the proposed holding company, however, it is clear that the proposed plan was irrevocable only to the extent that its reversal would result in certain tax consequences (Tr. 117-118). Moreover, Mr. Bloom admitted on cross-examination that the personal holding company concept was a fairly common type of estate planning device and that it was routine for the IRS to issue favorable rulings in connection with such plans (Tr. 115-117).

Other than the above, which at best explains a delay of one year, Mr. Bloom knew of no reason for the delay of approximately 4 years in effectuating the alleged estate planning device (Tr. 109). He did recall, however, that the "project" was reactivated in "late 1971" by Mr. Vesco (Tr. 110-111).

When the "project" was "reactivated", it is clear that any estate planning advantage had disappeared. Although ICC had risen dramatically to a high of approximately $50 per share, Bloom admitted that it had "come down just as dramatically" to "someplace probably under $10" in 1971 (Tr. 109). Clearly, there could not be any hope of rapid appreciation in 1972 in view of the ever expanding investigation into the affairs of Vesco and ICC. The progress of the SEC investigation up through July of 1972, which is discussed below, was

well documented at the hearing by Mr. Sears. Suffice it to say at this point that Vesco, despite what his accountants and tax advisors might have been telling him with respect to the advantages of implementing the personal holding company concept as an estate planning technique, knew full well in July of 1972 that there was little if any chance of substantial appreciation of the ICC stock in light of what he knew about the seriousness of the SEC investigations. And, Mr. Bloom was very clear that such a device made sense only if the person who was transferring stock to a personal holding company could "foresee a situation where the value of the company [whose stock was to be so transferred] may increase dramatically over a period of time" (Tr. 105).

Nor, as noted, was there any explanation as to why the program was "reactivated" over four years after it was originally proposed and at a time when the SEC investigation was in full swing. Bloom admits that Hogan & Hartson was still against the transaction in 1972 (Tr. 112) and Hogan & Hartson's skepticism was the only explanation offered for any of the four years of delay between conception and the alleged effectuation of the plan.

We respectfully suggest that the foregoing demonstrates beyond question that there was no real estate planning purpose behind the formation of Vesco & Co. However, even

should the court conclude that estate planning played some part in the formation of Vesco & Co. and the transfer to it of over 800,000 shares of ICC stock, the evidence discussed below requires that the corporate identity of Vesco & Co. be ignored and that it be considered nothing more than an extension of Robert L. Vesco, i.e., his alter ego. This evidence, we respectfully suggest, shows that Vesco dealt with and used Vesco & Co. without any regard for its allegedly separate corporate identity.

Evidence of Vesco's use of Vesco & Co. for his own Personal Purposes

Perhaps most telling is the transaction whereby Vesco allegedly obtained a personal loan from Trident Bank and, as security for that loan, pledged the very ICC stock that he had just recently transferred to Vesco & Co. Of course, Vesco & Co.'s minutes reflect this transaction as a guaranty by Vesco & Co. of the loan and the hypothecation of the ICC stock held by Vesco & Co. as security for that guaranty. However, the fact that the Board of Directors of Vesco & Co. that supposedly approved this transaction consisted of Vesco's wife, and his personal secretary and his long-time associate and both of whom are co-defendants herein, requires, we respectfully submit, the court to look through form to the substance of the transaction.

Additional evidence adduced at the hearing showed that Vesco did not hesitate to negotiate transactions which involved the sale or disposition of Vesco & Co.'s sole asset, i.e., the ICC stock he had transferred to it. For example, Leonard Polisar, the Vice President and General Counsel for ICC from June of 1972 through February of 1973 testified that in or about September of 1972 he was involved in a transaction calling for the sale of the ICC stock held by Vesco and Vesco & Co. to a company called Goldfield (Tr. 77-78). Mr. Polisar's testimony made it quite clear that Vesco was negotiating for both himself and Vesco & Co. (Tr. 78), and specifically referred to one incident where, during the course of a negotiating meeting, the room was cleared of everyone except Vesco and the principal negotiator for Goldfield (Tr. 79). Mr. Polisar also was quite clear in his testimony that no one from Vesco & Co. other than Mr. Vesco was present at any of the negotiating meetings he attended in connection with the proposed Goldfield transaction (Tr. 79).

Similarly, Elmer Sticco, presently the Executive Vice President of ICC, gave testimony concerning a proposed transaction negotiated in early 1973. This transaction, negotiated at a number of meetings held in late January and early February, 1973, at which, other than lawyers, Mr. Sticco, Mr. Vesco and Mr. Mailman, the other principal to the

transaction, were present, similarly involved the ICC stock held by Vesco & Co. As finally negotiated, the proposed transaction called for (i) Vesco to sell his own personal shares of ICC (approximately 120,000 shares) to Sticco and other employees of ICC (100,000 shares) and to Mailman (20,000 shares); (ii) the hiring of Mailman by Vesco & Co. as a consultant for $50,000 per year, (iii) Vesco & Co.'s agreement that Mailman would be able to vote the 840,000 shares of ICC stock held by Vesco & Co. for directors only for two years; and (iv) Vesco & Co.'s granting to Mailman an option to purchase 400,000 shares of its ICC stock at $5.50 per share (Tr. 31-33). Again, there was no question in Mr. Sticco's mind that Vesco was negotiating the transaction on behalf of Vesco & Co. (42) and, of course, Vesco never said that he had to go back and get the approval of Vesco & Co. before he could consider the transaction or conclude the negotiations (38).

Under the authorities cited at pages 19 and 20 of our previously submitted memorandum, we respectfully submit that the above discussed evidence mandates the conclusion that Vesco & Co. should be disregarded and that it ought be dealt with as though it were Robert Vesco.

Vesco's Awareness of the SEC Investigation

Additional evidence adduced at the hearing suggests that the primary reasons for the formation of Vesco & Co. and the transfer to it of over 800,000 shares of ICC stock was Vesco's apprehensions concerning the progress and probable consequences of the SEC investigation into his affairs. This investigation had started in March of 1971. However, according to the uncontradicted testimony of Mr. Sears, Vesco became fully aware of the serious nature of the investigation, as it related to himself personally, soon after Sears began to represent ICC before the SEC in connection with the investigation. Thus, Sears testified that in mid-February, in reporting to Vesco the results of his meeting with Mr. Mitchell, he told Vesco that he had seen a memo prepared by the general counsel for the SEC which, in addition to expressing the SEC's conclusion that the investigation was one that had serious connotations, also indicated that the SEC was considering perjury charges against Mr. Vesco in connection with the testimony he had given before the SEC (Tr. 56-57).

Following a meeting he had with the Chairman of the SEC, Sears again reported that the SEC felt Vesco had lied in his sworn testimony and was considering perjury

charges. He also reported the Commission's firm position that any discussion of settlement of the investigation would have to include or contemplate the issuance of an injunctive order (Tr. 59).

Then in May and June of 1972 Vesco himself met with the SEC staff members in Sears' presence. Sears testified that at the June meeting there was "heated dialogue about staff attitudes" and the possible perjury charges were again emphasized (Tr. 65).

It will be remembered that the "reactivation" of the plan to form Vesco & Co. took place, according to Mr. Bloom, in late 1971 (110) and that Vesco & Co. was actually formed and the transfers of stock to it made in July of 1972. From the above discussed evidence concerning Vesco's awareness of the progress of the SEC investigation, we respectfully suggest that one can reasonably conclude, especially in view of the complete absence of any evidence to the contrary, that Vesco's apprehensions concerning the outcome of the SEC investigation prompted him to make the transfers to Vesco & Co.

Other Transfers by Vesco

The above conclusion is we submit further supported by the evidence presented at the hearing which showed that Vesco was in the midst of a plan to dispose of a vide

variety of assets. Thus, in October, 1971, Vesco and his wife transferred approximately 57 acres of land which they owned in Boonton, New Jersey, to a trust set up for each of their four children (Tr. 16-17). In July of 1972, at or about the same time that the ICC stock was transferred to Vesco & Co., Vesco and his wife also deposited approximately $26,000 in trust accounts at the American National Bank & Trust Company (Tr. 17). Also, the evidence shows that in March of 1972 Vesco transferred at least 72,000 shares of Fairfield General Corporation stock to trusts set up for his children (Tr. 19-20). Finally, in early March of 1973 Vesco, apparently unsuccessfully, attempted to transfer 60,000 shares of International Health Sciences stock to his wife as custodian for each of his four children (Tr. 21).

By reason of the foregoing, we respectfully submit that the transfer of the ICC stock to Vesco & Co. in July of 1972 should be disregarded for a reason separate and apart from the alter ego theory discussed above. This reason is that the transfers to Vesco & Co. were fraudulent as to ICC and should, therefore, be set aside under the pertinent provisions of the debtor and creditor law. In this regard we respectfully refer the court to pages 28-29 of our previously submitted memorandum of law.

Conclusion

We respectfully suggest that the evidence adduced at the hearing clearly warrants the conclusion that Vesco should not be permitted to use a device such as a corporate alter ego in order to shield assets from ICC, especially in view of the fact that the ICC stock held by Vesco & Co. might well be the only asset of Vesco available to ICC to satisfy its outstanding judgments. As discussed above, the evidence supports this conclusion on either of two theories: First, that Vesco & Co. is a mere alter ego of Vesco which should be disregarded and, second, that the transfers of the ICC stock to Vesco & Co. were fraudulent and in violation of the debtor and creditor law. Thus, we respectfully request that an order be entered as requested by ICC in its application as set forth in the Court's May 20, 1975 Order to Show Cause and that said order include provisions with respect to the 846,380 shares of stock held of record by Vesco & Co.

Respectfully submitted,

SHEA GOULD CLIMENKO KRAMER & CASEY
Attorneys for International
Controls Corp.

Letter from Shea, Gould, Climenko, Kramer & Casey
to Judge Charles E. Stewart dated July 14, 1975.

(1071a - 1073a)

Letter

1072a

SHEA GOULD CLIMENKO KRAMER & CASEY

330 MADISON AVENUE

NEW YORK, NEW YORK 10017

AREA CODE 212
661-3200

CABLE ADDRESS
HOLMANG

WILLIAM A. SHEA
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JAMES J. A. GALLAGHER
BERNARD D. FISCHMAN
GERHARD J. RUGGIERI
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ALLAN J. PARKER
RALPH L. ELLIS
ROBERT J. RUBEN
GEORGE DE GENARO
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WILLIAM C. FINNERAN, JR.
VINCENT W. QUINN, JR.
RONALD H. ALENSTEIN
HERBERT A. BURSKY
ARNOLD S. JACOBS
JAMES D. PORTER, JR.
THOMAS E. CONSTANCE

MILES F. McDONALD
SAUL S. STREIT
CHRISTOPHER C. McGRATH
OF COUNSEL

July 14, 1975

BY HAND

Honorable Charles E. Stewart, Jr.
United States District Court for
the Southern District of New York
United States Courthouse
Foley Square
New York, New York

Re: International Controls Corp. v.
Robert L. Vesco, et al.
73 Civ. 2518

Dear Judge Stewart:

I am submitting herewith plaintiff's Post-Hearing Memorandum in connection with the hearing held on June 30, 1974. I am also enclosing for your convenience a copy of the Memorandum of Law which was previously submitted in connection with the motion presently before Your Honor and contains at pages 17 through 29 a discussion of what we feel is the applicable law.

As Your Honor may recall, at the June 30 hearing it was agreed that I would be given the opportunity to inspect Vesco & Co.'s minute and stock book and to submit as exhibits documents therefrom. In this regard I am enclosing a schedule listing additional exhibits (Plaintiff's Exhibits 12 through 21i) as well as the documents involved. The

RECEIVED JUL 16 1975

SHEA GOULD CLIMENKO KRAMER & CASEY

exhibit number is indicated in the upper right hand corner.

Respectfully,

Shea Gould Climenko Kramer & Casey

By_____
DANIEL L. CARROLL

DAC:jd
Enclosures

cc: James J. Shrager, Esq.
Hannock Weisman Stern & Besser
744 Broad Street
Newark, New Jersey

Letter from Hannoch, Weisman, Stern & Besser, Esqs.,
to Judge Charles E. Stewart, dated July 21, 1975.

(1074a - 1076a)

Letter Memorandum

I075a

July 21, 1975

1109-15 (A)

Honorable Charles E. Stewart, Jr.
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: ICC vs. Vesco
Civil Action No. 73-2518

Dear Judge Stewart:

I wish to bring to Your Honor's attention an issue with respect to the above matter. As Your Honor will recall from Mr. Bloom's testimony, as well as the stipulation introduced by plaintiff, at the time of the formation of Vesco & Co., Inc. the four children of Robert L. Vesco exchanged shares of ICC stock they owned for shares of stock in Vesco & Co., Inc. It is our position that whatever decision Your Honor reaches in connection with this matter that the interest of the children of Robert L. Vesco should not be disturbed.

I believe Mr. Carroll will be in a position to confirm that the following are the facts with respect to the shares of ICC stock owned beneficially by the Vesco children:

Prior to December 19, 1966, Robert L. Vesco was custodian for each of his four children for 100 shares each of the stock of Captive Seal Corporation represented by Certificates No. C-39 through C-42. On December 19, 1966, Captive Seal Corporation merged into ICC of New Jersey and the children became the beneficial owners of 773 shares each of that corporation's common stock represented by Certificates No. 72 through 75. Also, on December 19, 1966, ICC of New Jersey merged into ICC of Florida which was formerly known as Cryogenics, Inc. Each of the Vesco children became a beneficial owner of the 11,595 shares of that corporation's common stock. ICC of Florida is the plaintiff in the within action.

Obviously, plaintiff should not be placed in a better position than it would have been in if Vesco & Co., Inc. had not been formed, assuming arguendo Your Honor rules in plaintiff's favor on the within application, which we submit you should not. At any rate, the 46,380 shares beneficially owned by the Vesco children prior to 1963 should remain their property as absolutely no evidence was submitted to indicate that said shares were fraudulently conveyed to the children. As appears above, any conveyance took place many years ago.

Accordingly, we respectfully submit that the above-mentioned 46,380 shares should not be effected by any ruling that Your Honor might make.

In the event Mr. Carroll cannot confirm from his records the facts set forth above, or in the event Your Honor desires further proof with respect to the same, such proof can be supplied.

Very respectfully yours,

JAMES J. SHRAGER

JJS/aw
cc: Daniel L. Carroll, Esq.
Mr. Daniel W. Vesco, President
Vesco & Co., Inc.

MEMORANDUM DECISION BY JUDGE CHARLES E. STEWART, FILED AUGUST 22, 1975

STEWART, DISTRICT JUDGE:

Plaintiff International Controls Corporation ("ICC") has moved for an order permitting it to satisfy some of its outstanding default judgments against Robert L. Vesco through certain assets of Vesco and Vesco & Co., Inc. ("Vesco & Co."). The assets are 846,380 shares of ICC stock held of record by Vesco & Co. and 122,463 shares held of record by Vesco. The major issue here is whether ICC is entitled to enforce those judgments against Vesco by proceeding against Vesco & Co.

Plaintiff argues that such action is proper because Vesco & Co. is the alter ego of Vesco and therefore should not enjoy corporate status immune from Vesco's personal liabilities. In addition, ICC argues that Vesco & Co. obtained the shares through transfers from Vesco which were fraudulent as against ICC and therefore voidable. On June 30, 1975, a hearing was held on these issues. We find that the corporate veil of Vesco & Co. should be pierced since it is the mere alter ego of Vesco and to sustain it would work an injustice and fraud upon plaintiff. In view of this finding, we neeed not reach the question posed by plaintiff of whether the assets were obtained through fraudulent transfers under the New York Debtor and Creditor Law.

There is a strong presumtion of validity surrounding the corporate form which can only be overcome in unusual circumstances. *Quinn v. Butz*, 510 F.2d 743 (D.C. Cir. 1975; *Zubik v. Zubik*, 384 F.2d 267 (3d Cir. 1967); *Chengelis v. Cenco Instruments Corp.*, 386 F. Supp. 862 (W.D.

Pa. 1975). Generally, it is necessary to show that there is fraud, misrepresentation or illegality involved in use of the corporate device before a court will disregard its limited liability. *See Anderson v. Abbott*, 321 U.S. 349, 362 (1944); *Lehigh Valley Industries Inc. v. Biren*, ° ° ° 380 F. Supp. 798 (S.D.N.Y. 1975).

> If any general rule can be laid down, in the present state of authority, it is that a corporation can be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.

Quinn v. Butz, 510 F.2d 743, 757-758 (D.C. Cir. 1975). In the instant case we have a number of factors concerning the establishment, ownership and operation of Vesco & Co. which, when taken together, lead us to conclude that Vesco & Co. is merely the alter ego of Vesco and that an injustice would result by maintaining the corporate fiction.

Vesco & Co., chartered as a Delaware corporation on July 12, 1972, was organized as a personal holding company for Vesco's shares of plaintiff ICC. Vesco was the president and a director of ICC at that time. The other officers and directors included Shirley Bailey, Vesco's personal secretary and Richard E. Clay, a close personal friend. At some time later, Vesco's wife took Vesco's place as president and a director of Vesco & Co. Around the time of incorporation, Vesco received 52 shares of Class A voting common stock and 1,838 shares of preferred stock in exchange for 350,000 shares of ICC. At the same time, Vesco exchanged 20,292 shares of ICC which he then held

as custodian for his four children for 42 shares of Class A voting common stock and 12,000 shares of Class B non-voting common stock of Vesco & Co., also to be held by Vesco in custody for his children. On December 29, 1972, Vesco transferred an additional 339,912 shares of ICC to Vesco & Co. and received 675 shares of Vesco & Co. preferred stock. Again, Vesco, as custodian for his children, exchanged an added 26,088 shares of ICC for 8,000 shares of Class B non-voting common stock of Vesco & Co. At a later time, Vesco's wife became custodian for all the children's shares. The shares of ICC stock held by Vesco & Co. are its sole substantial asset (Vesco's schedule 13D, Pl. Ex. 1).

In *Quinn v. Butz, supra,* the court, analyzing the judicial doctrine of piercing the corporate veil, examined the various circumstances in which it is used "not the least of which are those wherein the corporation is simply the alter ego of its owners." In speaking of a corporate alter ego, the court explained:

> we speak not merely of single ownership, or of the deliberate adoption and use of a corporate form in order to secure its legitimate advantages, but of such domination of a corporation as in reality to negate its separate personality. When at some innocent party's expense, the corporation is converted into such an instrumentality, 'the courts will not permit themselves to be blinded or deceived by mere forms or law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.'"

Quinn v. Butz, 510 F.2d at 758 (citations omitted).

While it is true that a corporation can be wholly owned by a single individual without losing corporate status, the "identity of interest" between Vesco and Vesco & Co., already acknowledged by the Court of Appeals, *ICC v. Vesco*, 490 F.2d 1334, 1350 (2d Cir. 1974), can be sufficient when taken with other factors to find the two to be inseparable for purposes of liability. Vesco owned all of the preferred and 52% of the voting common stock of Vesco & Co. in his own behalf and 100% of the non-voting common stock of Vesco & Co. as custodian for his four children. At some point he transferred his interest in the company as well as the shares he held as custodian for his children to his wife. There is some evidence that the transfer date of July 21, 1972 which appears on the stubs of the certificates was fraudulently back-dated, since plaintiff's exhibit 13 indictes that Vesco himself did not receive some of those very shares until December 29, 1972. Such evidence can only lead us to conclude there was an improper motive in the transfer.

Plaintiff also showed evidence of Vesco's personal use of the corporation, a clear ground for ignoring the corporate form. *Quinn v. Butz*, 510 F.2d 743 (D.C. Cir. 1975); *Quarles v. Fuqua Industries, Inc.*, 504 F.2d 1358, 1362 (10th Cir. 1974); *Dudley v. Smith*, 504 F.2d 979, 982 (5th Cir. 1974). Indeed among this evidence was a transaction where Vesco & Co. pledged its sole asset, all its shares of ICC stock, as security for a personal loan to Vesco. Although Vesco & Co. argues that Vesco's grant of an option to purchase all of his preferred stock at a substantial discount over market value in return for the guaranty was a good business proposition, we agree with plaintiff that considering the composition of Vesco & Co.'s Board of Directors, defendant's explanation is at least suspect.

The most important evidence bearing upon the relationship between Vesco and Vesco & Co., however, involves the purpose and circumstances surrounding the company's inception. Bad faith in the formation of a corporation justifies piercing the corporate veil. *Maley v. Carroll*, 381 F.2d 147 (5th Cir. 1967); *Chengelis v. Cenco Instruments Corp.*, 386 F. Supp. 862 (W.D. Pa. 1975). The stated purpose for corporate ownership of the ICC shares was that it yielded "a more desirable business and administrative arrangement than direct ownership" and was "advantageous from an estate planning and administrative viewpoint" (Vesco's Schedule 13D, Pl. Ex. 1). The estate planning purpose behing the incorporation of Vesco & Co. is challenged by plaintiff. We agree with plaintiff that the circumstances surrounding the incorporation refute defendant's claimed estate planning purpose.

Vesco & Co. called Alan K. Bloom, formerly a member of the accounting firm, Coopers & Lybrand, as a witness at the hearing. He testified that he presented the idea of a personal holding company to Vesco as an estate planning device in 1967. Bloom stated that such a plan is effective when an individual anticipates a great increment in the value of his investment. It is this testimony which forms the basis for plaintiff's argument.

ICC argues that while the advice was valid as an estate planning technique in 1967 when the value of ICC shares was low and Vesco could anticipate a rapid and large increase in that value, it was no longer valid in 1972 when the plan was executed. While the shares did rise in the period after 1967, after the initiation by the Securities Exchange Commission ("SEC") of its investigation in 1971, the shares fell to their former low value where they remained at the time the plan was executed. Plaintiff

argues that since there could no longer be any great expectation that the shares would again increase in value, the personal holding company was no longer valid as an estate planning device. Plaintiff reasons that Vesco, knowing the serious nature of the SEC investigation as detailed in the testimony of Harry L. Sears, an ICC director, was attempting to immunize his assets from his own potential liabilities.

While ordinarily a corporation is formed to limit personal liability, it is an improper use of the corporate device when formed to defraud creditors or even potential creditors. *See ICC v. Vesco*, 490 F.2d 1334, 1350 (2d Cir. 1974); *Plumbers & Fitters, Local 761 v. Matt J. Zuich Construction Co.*, 418 F.2d 1054 (9th Cir. 1969). *Cf.* New York Debtor & Creditor Law, §276 (McKinney's 1945). The doctrine of piercing the corporate veil "is designed to prevent a person from doing injury and then escaping responsibility by hiding behind a corporate shield." *Plumbers & Fitters, Local 761 v. Matt J. Zuich Construction Co.*, 418 F.2d at 1058. Here, Vesco knew he was under investigation and "actually transferred his ICC common stock to Vesco & Co. at a time when he was actively engaged in his allegedly fraudulent scheme." *ICC v. Vesco*, 490 F.2d at 1350.

In addition to the fact that Vesco knew he was under investigation and made the transfer to Vesco & Co. during the time period covered by the detailed allegations of fraud in the complaint, Vesco made other transfers of property at the time time. This apparent scheme to dispose of a wide variety of assets supports the conclusion that Vesco's intent with regard to the formation of Vesco & Co. was improper. These other transfers were stipulated to in substance at the hearing and need not be set forth here.

In light of all the above circumstances, we think that plaintiff ICC has demonstrated that the incorporation of Vesco & Co. was not for a valid corporate purpose, but rather was an attempt by Vesco to immunize his assets from liability while maintaining personal control over and use of those assets. In view of this finding, we find it desirable to appoint a receiver to collect those assets. Defendants Vesco and Vesco & Co. are directed to turn over all certificates of shares of ICC and Fairfield General Corporation stock in their possession, custody or control, to the receiver within 20 days of such appointment, whether or not those certificates are within the United States. *United States v. Ross*, 302 F.2d 831 (2d Cir. 1962). However, we modify this order in accordance with *Ross*. Defendant Vesco, a non-resident of the United States, shall first "apply for such official consent to such transfer as may be required" in order "to provide against any possibility that any action ordered . . . will violate foreign law." 302 F.2d at 834.

Plaintiff has additionally requested that this court issue an order permitting ICC to cancel the stock held by Vesco and Vesco & Co. We defer decision on the right of ICC as judgment creditor to seek cancellation of stock held by Vesco and Vesco & Co. as judgment debtor until such time as it may become necessary to decide.

August 22, 1975

SO ORDERED.

/s/ Charles E. Stewart
CHARLES E. STEWART
U.S.D.J.

Affidavit in Support of Motion for Succeeding Order to Correct clerical mistake in order filed April 4, 1975.

(1088a - 1090a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, ET AL., Defendants.	73 Civ. 2518 (CES) Affidavit in Support of Motion For Succeeding Order To Correct Clerical Mistake in Order Filed April 4, 1975

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RENEE SACKS, being duly sworn, deposes and says:

1. I am an attorney with the firm of Gordon Hurwitz Butowsky Baker Weitzen & Shalov and am familiar with the facts in this case. This affidavit is filed in support of a motion to correct a clerical error as permitted by Federal Rules of Civil Procedure, Rule 60(a).

2. No previous application for the relief sought herein has been made.

3. On April 3, 1975, Judge Charles E. Stewart, signed an Order (Exhibit A) which was filed by the Clerk of the Court on April 4, 1975, and which provided in part that a judgment entered in July of 1974 and the plaintiff's right to have execution under it would in no way be affected by plaintiff's right to prove and to recover other amounts pursuant to the judgment entered October 5, 1973.

4. The said Order contains a clerical error in that paragraphs 2, 4, and 5 state that a judgment was entered against Robert L. Vesco on July 18, 1974, whereas in actuality, this judgment, a copy of which is annexed hereto as Exhibit B, was

EXHIBIT A

signed by Judge Stewart on July 12, 1974 and entered by the Clerk of the Court on July 16, 1974.

5. In order to correct this clerical mistake, plaintiff moves for a succeeding Order, identical in all respects to the Order filed April 14, 1975 except that the date which appears as July 18, 1974 in paragraphs 2, 4, and 5 of said Order be changed to July 16, 1974, the date the Judgment was actually entered.

RENEE SACKS

Sworn to before me this 10th day of September, 1975.

JANET L. DONNELLY
NOTARY PUBLIC, State of New York
No. 31-6068335
Qualified in New York County
Commission Expires March 30, 1976

Order dated September 11, 1975 correcting clerical mistake.

(1091a - 1093a)

UNITED STATES COURT
SOUTHERN DISTRICT OF NEW YORK

S. D. OF N. Y.

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

73 Civ. 3518 (CHS)

ORDER

A judgment having been entered herein against Robert L. Vesco on October 5, 1973, which judgment did not establish the specific amounts of damages recovered by the plaintiff from Robert L. Vesco;

AND a judgment having been entered herein against Robert L. Vesco on July 16, 1974, establishing that a portion of the damages recoverable under the judgment of October 5, 1973, amounts to $2,182,354.93, it is hereby

ORDERED, that both of said judgments are and were at the times when they were entered final judgments of this court; and it is further

ORDERED, that no further action of this court or any other court is required before the judgment entered July 16, 1974 may be presented for execution to any court of general jurisdiction in the United States or any foreign court that recognizes the validity of said judgment; and it is further

ORDERED, that the judgment entered July 16, 1974 and the plaintiff's right to have execution thereunder for the amount of $2,182,354.93, are and will be in no way affected by the plaintiff's right to prove and to recover other amounts pursuant to the judgment entered October 5, 1973; and it is further

EXHIBIT A

ORDERED, that the hereinabove Order shall succeed the Order signed April 3, 1975 and filed by the Clerk of the Court April 4, 1975.

Dated: New York, New York
September 11, 1975

Charles H. Tenney
UNITED STATES DISTRICT JUDGE

mm

EXHIBIT A

Notice of Appeal filed September 19, 1975.

(1094a - 1097a)

Notice of Appeal 1095a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., :

Plaintiff, : Index No. 73
Civ. 2518 (CES)

-vs- :

ROBERT L. VESCO, et al., : NOTICE OF APPEAL

Defendants. :

:

TO: Clerk
United States Court of Appeals
40 Foley Square
New York, New York 10007

SHEA, GOULD CLIMENKO, KRAMER & CASEY
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017

SIRS:

NOTICE is hereby given that defendant, Vesco & Co., Inc., hereby appeals to the United States Court of Appeals for the Second Circuit from the whole of the opinion and order of the Honorable Charles E. Stewart filed on the 22nd day of August, 1975, holding that Vesco & Co., Inc. is the alter ego of Robert L. Vesco, and appointing a receiver to collect the assets of Vesco & Co., Inc., and directing that certain certificates of shares of ICC and Fairfield General Corporation be turned over to such receiver

by defendants Vesco and Vesco & Co., Inc.

ARUM, FRIEDMAN & KATZ
450 Park Avenue
New York, New York 10022

By _____
MICHAEL HEITNER

HANNOCH, WEISMAN, STERN & BESSER
744 Broad Street
Newark, New Jersey 07102

By (s) James J. Shrager
JAMES J. SHRAGER

Attorneys for Defendant Vesco & Co., Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index No. 73
Civ. 2518 (CES)

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-vs-

ROBERT L. VESCO, et al.,

Defendants

NOTICE OF APPEAL

ARUM, FRIEDMAN & KATZ
450 Park Avenue
New York, New York 10022

HANNOCH, WEISMAN, STERN & BESSER
744 Broad Street
Newark, New Jersey 07102

Attorneys for Defendants
Vesco & Co., Inc.

Notice of Appeal 1097a

(1098a - 1105a)

Order dated and filed September 22, 1975.

sell any personal property in which defendant Robert L. Vesco has an interest and to do any other act designed to satisfy the judgment entered against Robert L. Vesco and in favor of plaintiff in the above-entitled action on July 12, 1974 in the amount of $2,422,466.72 and the judgment entered by this Court on September 11, 1974 in an action entitled International Controls Corp. v. Robert L. Vesco (74 Civ. 1558) against Robert L. Vesco and in favor of International Controls Corp. in the amount of $2,900,000;

(b) directing defendant Robert L. Vesco to deliver to said receiver, within 20 days from the entry of said order, all shares of common stock of International Controls Corp. in his possession, custody or control including 122,463 shares of such

Order 1099a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC
SEP 22 1975
SDofNY

INTERNATIONAL CONTROLS CORP., Plaintiff,	73 Civ. 2518 (CES)
-against-	ORDER
ROBERT L. VESCO, et al., Defendants.	

Plaintiff International Controls Corp., having moved this Court by Order to Show Cause dated May 20, 1975 for an order pursuant to Rule 69 of the Federal Rules of Civil Procedure and Rules 5201, 5225 and 5228 of the New York Civil Practice Laws and Rules:

(a) appointing a receiver to collect and

within 20 days [illegible]
shares of common stock of Fairfield General Corporation in its possession, custody or control including all shares of such stock held of record by defendant Robert L. Vesco; and

(e) upon the failure of defendants Robert L. Vesco and Vesco & Co., Inc. to deliver the stock as required by "(b)" and "(c)" above, directing that International Controls Corp. be permitted to cancel on its books all shares of its stock held of record by defendants Robert L. Vesco and Vesco & Co., Inc. in satisfaction of the judgments referred to in "(a)" above and that upon such cancellation a hearing be held for the purpose of determining the value of such shares at the time of cancellation,

stock held of record by defendant Robert L Vesco and 846,380 shares of such stock held of record by defendant Vesco & Co., Inc.;

(c) directing defendant Vesco & Co., Inc. to deliver to said receiver, within 20 days from the entry of said order, all shares of common stock of International Controls Corp. in its possession, custody or control including 846,380 shares of such stock held of record by defendant Vesco & Co., Inc. and 122,463 shares of such stock held of record by defendant Robert L. Vesco;

(d) directing defendants Robert L. Vesco and Vesco & Co., Inc. to deliver to said receiver, within 20 days from the entry of said order, all

defendant Vesco & Co., Inc.; (b) rendered a decision on August 22, 1975; and (c) entered an Order dated September 4, 1975 appointing Andrew Maloney, Esq. of the law firm of Maloney, Viviani & Higgins, 1290 Avenue of the Americas, New York, New York 10019 as the Receiver requested, and sufficient cause appearing therefor; it is hereby

ORDERED that said Andrew Maloney shall collect and, subject to the further order of this court, sell the following property in which defendant Robert L. Vesco has an interest:

(i) all shares of common stock of International Controls Corp. in the possession, custody or control of defendant Robert L. Vesco including 122,463 shares of such stock held of record by defendant Robert L. Vesco and 846,380 shares of such stock held

NOW, upon reading the affidavit of Daniel L. Carroll, sworn to May 19, 1975 and the exhibits annexed thereto and the supplemental affidavit of Daniel L. Carroll, sworn to May 29, 1975 and the exhibit annexed thereto in support of said motion, and said motion having come on for hearing on June 2, 1975 before the Honorable Charles E. Stewart, Jr., and defendant Robert L. Vesco having failed to appear or raise any objection to the entry of the order requested at said hearing,

AND this court having (a) held a hearing on June 30, 1975 for the purpose of determining whether International Controls Corp. is entitled to enforce its judgments against Robert L. Vesco by proceeding against the stock of International Controls Corp. held of record by Vesco & Co., Inc. and, having at said hearing received such evidence as was presented by International Controls Corp. and

is, within 20 days from the date hereof, directed (a) to deliver to said Andrew Maloney, all shares of common stock of International Controls Corp. in which he has an interest including 122,463 shares of such stock held of record by him and all shares of common stock of Fairfield General Corporation in his possession, custody or control including all shares of such stock held of record by him or (b) to appear herein and show why an official consent of an official of a foreign nation is required for such transfer in order to avoid a violation of foreign law and demonstrate that he has requested such consent as may be required; and it is further

ORDERED that defendant Vesco & Co., Inc. be, and it hereby is directed to deliver to said Andrew Maloney, within 20 days from the date hereof, all shares of common stock of International Controls Corp. in which it has an interest including 846,380 shares

of record by defendant Vesco & Co., Inc.;

(ii) all shares of common stock of International Controls Corp. in the possession, custody or control of defendant Vesco & Co., Inc. including 846,380 shares of such stock held of record by defendant Vesco & Co., Inc. and 122,463 shares of such stock held of record by defendant Robert L. Vesco;

(iii) all shares of common stock of Fairfield General Corporation in the possession, custody or control of defendant Robert L. Vesco including all shares of such stock held of record by defendant Robert L. Vesco; and it is further

ORDERED that defendant Robert L. Vesco be, and he hereby

846,380 shares of common stock of International Controls Corp. held of record by defendant Vesco & Co., Inc. as provided herein, International Controls Corp. shall be permitted to cancel on its books said 846,380 shares and upon cancellation shall reissue a like number of shares in the name of Andrew Maloney, Receiver, who shall, and he hereby is directed, to hold said shares pending further order of this court; and it is further

ORDERED that a certified copy of the within order shall be mailed to defendant Robert L. Vesco on or before September 1975 by Certified Mail, Return Receipt Requested, addressed to defendant Robert L. Vesco at 170 Denville Road, Boonton Township, New Jersey 07005 and by Certified or Registered Mail, addressed to defendant Robert L. Vesco at Brace Ridge Road, Nassau, Bahamas,

of such stock held of record by it and all shares of common stock of Fairfield General Corporation in its possession, custody or control including all shares of such stock held of record by defendant Robert L. Vesco; and it is further

ORDERED that should defendants Robert L. Vesco and/or Vesco & Co., Inc. fail to deliver to said Andrew Maloney the 122,463 shares of common stock of International Controls Corp. held of record by defendant Robert L. Vesco as provided for herein or should defendant Robert L. Vesco fail to appear as referred to above, International Controls Corp. shall be permitted to cancel on its books said 122,463 shares and, upon such cancellation, International Controls Corp. shall reissue said 122,463 shares of common stock in the name of Andrew Maloney, Receiver, who shall, and he hereby is directed, to hold said shares pending further order of this court; and it is further

ORDERED that should defendant Robert L. Vesco and/or Vesco & Co., Inc. fail to deliver to said Andrew Maloney the

plaintiff shall have the right to make further application to this court for such relief, and such other and further relief as may be appropriate.

Dated: New York, New York
September 22, 1975

S/ Charles E. Stewart, Jr.
U. S. D. J.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

P. O. Box N-8232, Nassau, Bahamas, which are his last known addresses and to defendant Vesco & Co., Inc. by Certified Mail, Return Receipt Requested, addressed to its attorneys, Hannoch, Weisman, Stern & Besser, 744 Broad Street, Newark, New Jersey 07102 and it is further

ORDERED that a certified copy of the within order shall be mailed to Trident Bank Limited on or before September 27, 1975 by Certified or Registered Mail addressed to Trident Bank Limited, P. O. Box 4815, Nassau, Bahamas; and it is further

ORDERED that decision is deferred on the remainder of the relief requested by plaintiff on the instant application, and

INDEX NO. 73 Civ. 2316 (CLB)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL SYSTEMS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

ORDER

SHEA GOULD CLIMENKO KRAMER & CASEY
330 MADISON AVENUE
NEW YORK, N. Y. 10017
MO 1-3200

ATTORNEYS FOR Plaintiff

1105a

Order

(1106a - 1110a)

Civil Appeal pre-argument statement (Form C)
and Transcript of information (Form D) dated
September 29, 1975.

☒ CONTRACT	☐ MOTOR VEHICLE	☐ PRISONER PETITIONS	☐ OTHER	☐ BANKS AND BANKING	☐ ENVIRONMENTAL MATTERS
☐ OTHER CONTRACT	☐ OTHER PERSONAL INJURY	☐ VACATE SENTENCE (2255)	LABOR	☐ COMMERCE ICC RATES, ETC	☐ CONSTITUTIONALITY OF STATE STATUTES
REAL PROPERTY	PERSONAL PROPERTY	☐ HABEAS CORPUS	☐ FAIR LABOR STANDARDS	☐ DEPORTATION	☐ NARA TITLE III
☐ CONDEMNATION	☐ FRAUD	☐ MANDAMUS	☐ LABOR/MGMT RELATIONS	☐ SELECTIVE SERVICE	
☐ FORECLOSURE	☐ OTHER PERSONAL PROPERTY DAMAGE	☐ CIVIL RIGHTS	☐ LABOR/MGMT REPORTING & DISCLOSURE ACT	☐ SECURITIES COMMODITIES EXCHANGE	☐ OTHER STATUTORY ACTIONS
☐ RENT LEASE & EJECTMENT			☐ RAILWAY LABOR ACT	☐ SOCIAL SECURITY	
☐ TORTS TO LAND			☐ OTHER LABOR LITIGATION	☐ TAX SUITS	
☐ ALL OTHER REAL PROPERTY					

During trial ☐

Appeal from order:
- Preliminary injunction ☐
- Class action ☐
- Amend answer ☐
- Enforce settlement ☐
- Counsel fees ☐
- Stay ☐
- Other ☒

Damages
- Granted ☐
- Amount $ _____
- Denied ☐

Other relief (specify)

See description below

APPROXIMATE SIZE OF RECORD ▶ NUMBER OF EXHIBITS ▶ Approx. 12 HAS TRANSCRIPT BEEN MADE? YES ☒ NO ☐

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW: Plaintiff International Controls Corp (ICC), moved for an order permitting it to satisfy its judgment against defendan Robert L. Vesco by reaching shares of ICC stock held of record by defendant Vesc Co., Inc. A hearing was held on June 30, 1975 for the purpose of determining plaintiff's claim that ICC is entitled to reach the said stock on the theory tha Vesco & Co. is the alter ego of Robert Vesco or on the theory that the transfer by Vesco & Vesco & Co. of the ICC stock was fraudulent and should be set aside. The court found that Vesco & Co. is the alter ego of Robert L. Vesco. (See Rider

ISSUES PROPOSED TO BE RAISED ON APPEAL:

(1) The finding that Vesco & Co. is the alter ego of Robert L. Vesco is against the weight of the evidence.
(2) The judgment for which ICC sought enforcement is not a valid or final judgment.
(3) The court was in error in failing to grant Vesco & Co., Inc. the right to be heard as to the merits of the claim of Robert L. Vesco.

I Attorney for the Appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript (FRAP 10 (b). (Check one box)

I ☐(1) have already ordered the transcript to be prepared OR

☐(2) will order it to be prepared at the time required by the Staff Counsel in the implementation of the Civil Appeals Management Plan.

COUNSEL'S SIGNATURE HANNOCH, WEISMAN, STERN & BESSER (James J. Shraged) James J. Shraged, Dtic

DATE September 29,19

FORM C

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

(To be filed by appellant with Clerk of Court of Appeals and served on other parties within ten days after filing notice of appeal.)

(Attach additional sheets if space is not sufficient)

CASE TITLE (Complete)

INTERNATIONAL CONTROLS CORP., Plaintiff,
-against-
ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERICK J. WEYMAR, GILBERT R.J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, GEORGE PHILLIPE, JOEL GRADY, (See Rider)

APPEAL FROM DISTRICT COURT

DISTRICT ▶ Southern District of N.Y.

DISTRICT COURT DOCKET NUMBER ▶ 73 Civ. 2518

DATE FILED IN DISTRICT COURT (MO. DAY YEAR) ▶ June 7, 1973

DATE NOTICE OF APPEAL FILED ▶ September 19, 1975

RELATED CASE(S) ▶

Is this a cross appeal? YES ☐ NO ☒

COUNSEL NAME FOR APPELLANTS:	ADDRESS	TELEPHONE
Arum, Friedman & Katz, (Michael Heitner) Hannoch, Weisman, Stern & Besser (James J. Shrager)	450 Park Avenue New York, N.Y. 744 Broad Street Newark, N.J.	(212) 644-9800 (201) 621-8800
FOR APPELLEES:		
Shea, Gould, Climenko & Kramer	330 Madison Ave. New York, N.Y.	(212) 661-3200
Gordon, Hurwitz, Butowsky & Baker (David M. Butowsky)	330 Madison Ave. New York, N.Y.	(212) 661-8330

(Check One Box Only)

NATURE OF SUIT

CONTRACT	TORTS	ACTIONS UNDER STATUTES: CIVIL RIGHTS	FORFEITURE/PENALTY	PROPERTY RIGHTS	OTHER STATUTES
☐ INSURANCE	PERSONAL INJURY	☐ VOTING	☐ AIR CULTURE	☐ COPYRIGHT	☐ TRADEMARK
☐ MARINE	☐ AIRPLANE	☐ JOBS	☐ FOOD & DRUG	☐ PATENT	
☐ MILLER ACT	☐ ASSAULT, LIBEL & SLANDER	☐ ACCOMODATIONS	☐ LIQUOR LAWS		☐ STATE RE APPORTIONMENT ☐ AGRICULTURAL ACTS
☐ NEGOT. INSTRUMENT	☐ FEDERAL EMPLOYER'S LIABILITY	☐ WELFARE	☐ R.R. & TRUCK		☐ ANTI-TRUST ☐ ECONOMIC STABILIZATION ACT
☐ RECOV. OVERPAY.	☐ MARINE	☐ OTHER CIVIL RIGHTS	☐ AIR LINE REGS		☐ BANKRUPTCY

METHOD OF DISTRICT COURT DISPOSITION

Judgment before trial:
- Summary Judgment ☐
- Dismissed ☐
- Other ☐

Judgment during or after trial:
- Court trial ☒
- Jury trial ☐

Prisoner petition:
- Granted ☐
- Denied ☐

Injunction
- Granted ☐
- Denied ☐

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW: cont'd

It ordered that: (1) A receiver be appointed to collect from defendants Vesco & Vesco & Co. all shares, certificates of shares of ICC and Fairfield General Corporation stock in their possession within 20 days of appointment; (2) That Robert L. Vesco apply for the required official consent for such transfer; (3) That the decision as to the right of ICC as judgment creditor to seek cancellation of stock held by Vesco & Vesco & Co. as judgment debtor, be deferred.

RIDER

Case Title con'd

SHIRLEY BAILEY, VESCO & CO., INC., IOS LTD., COLUMBUS TRUST COMPANY, LIMITED, BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD., (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK - NEW YORK,

Defendants,

ANDEAN CREDIT S.A. and JOHN K. SCHEMMER, receiver,

Intervenors.

☐ PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS ☐ PREPARE TRANSCRIPT OF TRIAL ☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS ☐ PREPARE (Other; Specify)	DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.

COUNSEL'S SIGNATURE	DATE
HANNOCH, WEISMAN, STERN & BESSER By James J. Shrager /pmc James J. Shrager	September 29, 1975

COURT REPORTER ACKNOWLEDGEMENT

To be completed by court reporter. Return one copy to clerk, U.S. Court of Appeals.

DATE ORDER RECEIVED	ESTIMATED COMPLETION DATE	ESTIMATED NUMBER OF PAGES

SIGNATURE OF COURT REPORTER	DATE

Appeal Forms 1109a

FORM D

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

TRANSCRIPT INFORMATION
CIVIL APPEAL

To be completed by counsel for appellant in civil appeal from district court within ten days after filing notice of appeal.

DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellee (5) retained by Counsel for Appellant.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE	DISTRICT	DOCKET NUMBER
INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, et al., Defendants.	Southern District	73 Civ. 2518
	JUDGE: Stewart	APPELLANT: Vesco and Co., INc.
	COURT REPORTER: Southern District Court Reporter, U.S. Court House, NY., NY.	COUNSEL FOR APPELLANT: Arum, Friedman & Katz Michael Heitner, Esq. 450 Park Ave., NY., NY 10022 and Hannoch, Weisman, Stern & Bess James J. Shrager, Esq. 744 Broad Street, Newark, N.J.

TRANSCRIPT ORDER
Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATES)

I am ordering a transcript.

X I am not ordering a transcript.
Reason:

☒ Daily copy is available.
☐ Other. Attach explanation.

METHOD OF PAYMENT ☐ FUNDS ☐ CJA VOUCHER (CJA 21)

Pre-Argument Statement (Form C) and Transcript Information (Form D) are hereby acknowledged this 29th day of September, 1975.

GORDON, HURWITZ, BUTOWSKY & BAKER
Special Counsel for Plaintiff

By /s/ David M. Butowsky
David M. Butowsky

ACKNOWLEDGMENT OF SERVICE

DUE, TIMELY & LEGAL service of the within Civil Appeal Pre-Argument Statement (Form C) and Transcript Information (Form D) are hereby acknowledged this 29th day of September, 1975.

SHEA, GOULD, CLIMENKO & KRAMER
Attorneys for Plaintiff

By /s/ Daniel L. Carroll
Daniel L. Carroll

DUE, TIMELY & LEGAL service of the within Civil Appeal Pre-Argument Statement (Form C) and Transcript Information

of law

3/5/74	Filed plaintiff's order that intervenor Andean Credit, S.A. show cause why an order should not be modifying preliminary injunction
8/2/74	Filed plaintiff's restraining notice re: Bahamas Commonwealth Bank
4/3/75	Filed pre-hearing memo of defendant Vesco & Co., Inc.
4/3/75	Filed plaintiff's pre-hearing memo
6/2/75	Filed counter order that plaintiff appear for dep. on or before 6-16-75.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this

CLERK'S CERTIFICATE AND SUPPLEMENTS

CASE NO. 73-CIV. 2518
JUDGE STEWART
CLERK'S CERTIFICATE

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A-T, and the original filed papers numbered 1 thru 251, and exhibits none, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

2/20/74	Filed Intervenor Andean Credit, S.A. and affidavit of Arthur H. Christy
2/20/74	Filed Intervenor Andean Credit, S.A. memo

day of , in the year of our Lord, One thousand nine hundred and seventy five, and of the Independence of the United States the 200 year.

/s/ Raymond Burghardt
RAYMOND BURGHARDT
Clerk of the Court

11/7/75

/s/
Clerk of the Court.

CASE NO. 73 Civ. 2518 (CES)
JUDGE: STEWART, C. E.
SUPPLEMENTAL CLERK'S
CERTIFICATE

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified extract of docket entries lettered F, and the original filed papers Nos. 246 and 252 through 254, inclusive, constitute the supplemental record on appeal in the above-entitled proceeding.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this day of , in the year of our Lord, one thousand nine hundred and seventy , and the Independence of the United States the 19 th year.

and affidavit of Daniel L. Carroll by certified mail to R. L. Vesco, 170 Denville Road, Boonton Township, New Jersey, filed May 29, 1975. Lost

Affidavit of service by mail of Louis Brander of Memorandum of Law upon Robert L. Vesco, Bahamas, filed June 4, 1975. 253

Affidavit of Daniel L. Carroll submitted to bring to the attention of the court additional facts in connection with ICC's application brought on by Order to Show Cause, filed June 3, 1975. Lost

Order pursuant to judgment against Robert L. Vesco and Vesco & Co., Inc., appointing receiver Andrew Maloney to collect ICC shares, filed September 27, 1975. 246

Clerk's Certificate 254

No. 75-7548
CASE NO. 73 CIV. 2518 (CES)
JUDGE: STEWART, C. E.

First Supplemental Record.

INDEX TO THE SUPPLEMENTAL RECORD ON APPEAL — DOCUMENTS

Certified extract of docket entries — F

As per telephone conversation between Martin Chasin and the Clerk of the U.S. District Court (Mr. Freeman) on December 9, 1975, the "Lost" items on the Index were deleted by the Clerk and the other items (Nos. 252 through 254) were added to the Clerk's Certificate.

INDEX TO THE SUPPLEMENTAL RECORD ON APPEAL — DOCUMENTS

Affidavit of service of Stella L. Scott
dated May 20, 1975 of Order to Show Cause

filed May 29, 1975.

Affidavit of service of Harry J. Choromos on May 21, 1975 of Order to Show Cause and affidavit of Daniel L. Carroll, by personal delivery upon Hannoch, Weisman, Stern & Besser, filed May 29, 1975. Lost

Affidavit of service of Louis Brander dated May 20, 1975 of Order to Show Cause and affidavit of Daniel L. Carroll upon Robert L. Vesco by mail at 170 Denville Road, Boonton Township, New Jersey, filed May 29, 1975. Lost

No. 75-7548
CASE NO. 75 CIV. 2518 (CES)
JUDGE: STEWART, C. E.

First Supplemental Record.

INDEX TO THE SUPPLEMENTAL RECORD ON APPEAL

	DOCUMENTS
Certified extract of docket entries	F
Affidavit of Stella L. Scott of service by mail of Order to Show Cause and affidavit of Daniel L. Carroll upon Christy Frey & Christy, Dornbush Mensch Mandelstam & Schwartz, attorneys for defendants; Sullivan & Cromwell, attorneys for Marine Midland Bank; and Carter Ledyard & Milburn, attorneys for J. K. Schemmer, filed May 29, 1975	252

By: /s/ James J. Shrager
JAMES J. SHRAGER
For the Firm

CASE NO. 73 CIV. 2518 (CES)
JUDGE: STEWART, C. E.

NOTICE TO THE DOCKET CLERK

( ) ORIGINAL RECORD

(X) SUPPLEMENTAL RECORD

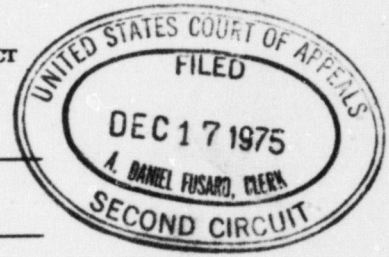
The record on appeal in the above-entitled proceeding has been certified and transmitted to the United States Court of Appeals for the Second Circuit this 9th day of December, 1975.

HANNOCH, WEISMAN,
STERN & BESSER
Attorneys for
Defendant-Appellant

Defendant-Appellant.

CIVIL ACTION—ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SAT BELOW: HON. CHARLES E. STEWART, JR., U.S.D.J.



EXHIBITS

ARUM, FRIEDMAN & KATZ,
450 Park Avenue,
New York, New York 10022

and

HANNOCH, WEISMAN,
STERN & BESSER,
744 Broad Street,
Newark, New Jersey 07102

Attorneys For Defendant-Appellant,
Vesco & Co., Inc.

JAMES J. SHRAGER
SUSAN I. LITTMAN
On the Brief

N. J. Appellate Printing Co., Inc., Woodbridge, N. J. (201) 636-2030

7

75-7548

B

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

DOCKET NO. 75-7548

INTERNATIONAL CONTROLS CORP.,
Plaintiff-Appellee,

vs.

ROBERT L. VESCO, et al.,
Defendants,

and

VESCO & CO., INC.,
Defendant-Appellant.

dated April 27, 1972 ..... 1138a-1140a

P-8 Order dated March 18, 1971 in the Matter of International Controls Corp., et als. 1141a-1144a

P-9 Resignation letter dated February 7, 1973 signed by Robert L. Vesco . 1145a-1152a

P-11 1973 Corporate Tax Return of Vesco & Co., Inc. 1153a-1160a

P-12 Unanimous consent of directors in lieu of the first meeting of the directors of Vesco & Co., Inc. dated July 21, 1972 ..... 1161a-1164a

EXHIBITS

Plaintiff's Exhibits

P-1 Schedule 13D of Vesco & Co., Inc. dated September 21, 1972 ..... 1114a-1119a

P-2 Securities and Exchange Form 3, dated January 10, 1973 ..... 1120a-1122a

P-3 Affidavit of Ralph M. Lowenbach, dated February 11, 1973 ..... 1123a-1127a

P-4 Affidavit of Milton H. Stern, dated June 12, 1973 ..... 1128a-1131a

P-5 Securities and Exchange Form 4, dated August 10, 1972 ..... 1132a-1134a

P-6 Securities and Exchange Form 4, dated January 10, 1973 .....1135a-1137a

P-7 Securities and Exchange Form 4,

February 15, 1973 signed by Robert L. Vesco 1182a-1183a

P-17 Loan agreement dated February 15, 1973 between Trident Bank Limited and Robert L. Vesco 1184a-1190a

P-18 Hypothecation agreement dated February 15, 1973 ..... 1191a-1193a

P-19 Option with respect to 2,500 shares of Vesco & Co., Inc. preferred stock signed by Robert L. Vesco 1194a-1195a

P-20 Letter dated July 21, 1972 from Robert L. Vesco to American National Bank & Trust Company 1196a-1198a

P-21a Copy of Vesco & Co., Inc.'s certificate B1 with stub 1199a-1202a

TABLE OF CONTENTS

P-13 Unanimous consent of directors in lieu of special meeting of the directors of Vesco & Co., Inc. dated December 29, 1972 ..... 1165a-1167a

P-14 Minutes of special meeting of the directors of Vesco & Co., Inc. on February 11, 1973 consisting of 6 pages 1168a-1174a

P-14a Minutes of special meeting of the directors of Vesco & Co., Inc. on February 11, 1973 consisting of 3 pages 1175a-1178a

P-15 Letter dated February 12, 1973 to Robert L. Vesco from Trident Bank Limited 1179a-1181a

P-16 Note in the amount of $1,000,000 dated

P-21i Copy of Vesco & Co., Inc.'s certificate B9 with stub 1223a-1226a

P-21j Copy of Vesco & Co., Inc's certificate B10 with stub 1227a-1230a

P-21k Copy of Vesco & Co., Inc.'s certificate B11 with stub 1231a-1234a

P-21l Copy of Vesco & Co., Inc.'s certificate B12 with stub 1235a-1238a

P-21m Copy of stub for Vesco & Co., Inc.'s certificate B13 ..... 1239a-1240a

P-21n Copy of stub of Vesco & Co., Inc.'s certificate B14 ..... 1241a-1242a

P-21o Copy of stub of Vesco & Co., Inc.'s certificate B15 ..... 1243a-1244a

P-21p Copy of stub of Vesco & Co., Inc.'s certificate B16 ..... 1245a-1246a

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P-21b Copy of Vesco & Co., Inc.'s certificate B2 with stub 1203a-1206a

P-21c Copy of Vesco & Co., Inc.'s certificate B3 with stub 1207a-1210a

P-21d Copy of Vesco & Co., Inc.'s certificate B4 with stub 1211a-1214a

P-21e Copy of stub for Vesco & Co., Inc.,'s certificate B5 ..... 1215a-1216a

P-21f Copy of stub for Vesco & Co., Inc.'s certificate B6 ..... 1217a-1218a

P-21g Copy of stub for Vesco & Co., Inc.'s certificate B7 ..... 1219a-1220a

P-21h Copy of stub for Vesco & Co., Inc.'s certificate B8 ..... 1221a-1222a

certificate A8 ..... 1271a-1272a

P-22i Copy of stub for Vesco & Co., Inc.'s certificate A9 ..... 1273a-1274a

Defendant's Exhibits

A Letter dated May 16, 1968 from Hannoch, Weisman, Stern & Besser to Robert Jeffers, Esq. 1275a-1282a

B Letter dated February 29, 1972 from Lybrand, Ross Bros. & Montgomery to Commissioner of Internal Revenue .. 1283a-1288a

C Letter dated July 6, 1972 from Lybrand, Ross Bros. & Montgomery to Commissioner of Internal Revenue 1289a-1291a

D Letter dated April 26, 1972 from Internal Revenue Service to Ira Shapiro 1292a-1295a

E Letter dated July 21, 1972 from Internal Revenue Service to Ira Shapiro 1296a-1298a

TABLE OF CONTENTS

P-22a Copy of Vesco & Co., Inc.'s certificate A1 with stub 1247a-1250a

P-22b Copy of Vesco & Co. Inc.'s certificate A2 with stub 1251a-1254a

P-22c Copy of Vesco & Co., Inc.'s certificate A3 with stub 1255a 1258a

P-22d Copy of Vesco & Co., Inc.'s certificate A4 with stub 1259a-1262a

P-22e Copy of Vesco & Co., Inc.'s certificate A5 with stub 1263a-1266a

P-22f Copy of stub for Vesco & Co., Inc.'s certificate A6 ..... 1267a-1268a

P-22g Copy of stub for Vesco & Co., Inc.'s certificate A7 ..... 1269a-1270a

P-22h Copy of stub for Vesco & Co., Inc.'s

Schedule 13D of Vesco & Co., Inc.
dated September 21, 1972

(1114a - 1119a)

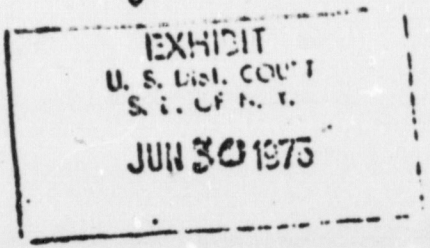
Exhibit P-1

of the Securities Exchange Act of 1934 by

VESCO & CO., INC.

With Respect to Common Stock of

INTERNATIONAL CONTROLS CORP.



1115a

SCHEDULE 13D

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

Filed Pursuant to Section 13(d)(1)

12, 1972;

(e) No conviction in a criminal proceeding during the last 10 years.

OFFICERS AND DIRECTORS

(1) (a) Robert L. Vesco, President and Director, 200 Fairfield Road, Fairfield, New Jersey 07006;

(b) Residence address: 170 Old Denville Road, Boonton Township, New Jersey 07005;

(c) Consultant to ICC;

(d) Mr. Vesco was Chairman of the Board of Directors and/or President and Chief Executive Officer of ICC or its predecessors from July 1965 through September 19, 1972. On behalf of ICC, he also serves or has served as an officer and/or director of several ICC subsidiaries and other companies. From 1962 to 1965, he was an independent investment and management consultant;

(e) No conviction in a criminal proceeding (excluding traffic violations or similar misdemeanors) during the last 10 years.

Item 1. Security and Issuer.

The securities to which this statement relates are the Common Stock of International Controls Corp. ("ICC") 200 Fairfield Road, Fairfield, New Jersey 07006.

Item 2. Identity and Background.

PERSON FILING STATEMENT

(a) Vesco & Co., Inc. ("VCI"), c/o Hannock, Weisman, Stern & Besser, 744 Broad Street, Newark, New Jersey 07102;

(b) Not applicable;

(c) & (d) VCI presently has no significant activity or assets other than its ownership of securities of ICC; it is authorized by its certificate of incorporation "to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware." The corporation was formed on July

(b) Residence address: Claremont Road, Bernardsville, New Jersey 07924;

(c) Vice President of ICC;

(d) Mr. Clay has been a Vice President of ICC since September 1966. On behalf of ICC, he also serves or has served as an officer and/or director of several ICC subsidiaries and other companies. Previously, he was a partner in Edgar, Clay and Associates from August 1965 to September 1966, and for more than three years prior thereto he was Director of Sales, Olin Mathieson Corp., Metals Division;

(e) No conviction in a criminal proceeding (excluding traffic violations or similar misdemeanors) during the last 10 years.

Item 3. Sources and Amount of Funds or Other Compensation.

The 370,088 shares of Common Stock of ICC were acquired by VCI on July 21, 1972 in exchange for voting common, non-voting common and preferred stock of VCI. Of these shares, 350,088 shares were acquired from Robert L. Vesco and 5,075 shares from each of his four minor children, Daniel William, Anthony Donald, Dawn Lee and Robert Bruce Vesco.

(2) (a) Shirley E. Bailey, Secretary-Treasurer and Director, 200 Fairfield Road, Fairfield, New Jersey 07006;

(b) Residence address: 41-1A Mt. Pleasant Village, Route 10, Morris Plains, New Jersey 07950;

(c) Secretary of ICC;

(d) Mrs. Bailey has been Secretary of ICC since December 1966 and from late 1965 to that date, she had been Secretary or Assistant Secretary of its predecessor corporations; for more than three years prior thereto she was employed as a secretary by various industrial concerns;

(e) No conviction in a criminal proceeding (excluding traffic violations or similar misdemeanors) during the last 10 years.

(3) (a) Richard E. Clay, Director, 200 Fairfield Road, Fairfield, New Jersey 07006;

(b) Residence address: Claremont Road, Bernards-

Item 7. Persons Retained, Employed or to be Compensated.

Not applicable.

Item 8. Material to be Filed as Exhibits.

Not applicable.

Item 4. Purpose of Transaction.

Corporate ownership of a portion of the ICC shares held by the tranferors was deemed to be a more desirable business and administrative arrangement than direct ownership. In addition, receipt by Mr. Vesco of shares of both preferred and common stock of VCI was deemed advantageous from an estate planning and administration viewpoint.

Item 5. Interest in Securities of the Issuer.

VCI owns a total of 370,380 shares of ICC Common Stock. Robert L. Vesco owns directly 573,875 shares of ICC Common Stock, and Daniel William, Anthony Donald, Dawn Lee and Robert Bruce Vesco, his minor children, each own 6,522 shares of ICC Common Stock, which are registered in the name of Robert L. Vesco, as custodian for each of them.

Item 6. Contracts, Arrangements or Understandings with Respect to Securities of the Issuer.

None

1119a

SIGNATURES

I certify that to the best of my knowledge and belief the information set forth in this statement is true, complete and correct.

R. L. VESCO & CO., INC.

By _____
Robert L. Vesco, President

Dated: September 21, 1972

Securities and Exchange Form 3,
dated January 10, 1973.

(1120a - 1122a)

Exhibit P-2

ESS ADDRESS OF REPORTING PERSON	2. STATE OF INCORPORATION	3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED
., INC. FIRST MIDDLE	Florida	MONTH DAY YEAR
H, WEISMAN, STERN & BESSE	5. IRS OR SS IDENTIFYING NUMBER OR REPORTING PERSON	6. RELATIONSHIP OF REPORTI PERSON TO COMPANY (Instruction 5)
STREET		Beneficial owner
W JERSEY 07102 (ZIP CODE)	— —	10% of the Compan stock.

TABLE I. Securities Beneficially O

Furnish the information required by the following table as beneficially owned directly or indirectly by the reporting person, includ excluding puts, calls, options and other rights or obligations required t (See Instruction 6)

ITLE OF SECURITIES OWNED (Instruction 9)	2. CUSIP NUMBER (FOR SEC USE ONLY)	3. AMOUNT OWNED DIRECTLY OR INDIRECTLY (Instruction 10)
k ($.10 par value)		846,380

SECURITIES AND EXCHANGE COMMISSION • Washington, D.C. 20549

FORM 3 Initial Statement of Beneficial Ownership of Securities

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

1121a

4. NAME OF COMPANY

INTERNATIONAL CONTROLS CORP.

JAN 17 1973

NG

of more than
y's common

7. DATE OF EVENT REQUIRING FILING OF THIS STATEMENT

MO. 12 DAY 29 YR. 72

Owned
s to securities of the company
ling transferable warrants but
o be reported in Table II.

4. NATURE OF BENEFICIAL OWNERSHIP (Instruction 11)
Direct

PLAINTIFF'S

EXHIBIT
U. S. Dist. COURT
S.D.N.Y.
JUN 30 1975

(OVER)

Item 3 (Continued)

TABLE II. Puts, Calls, Options an

Furnish the information required by the following table as to all puts, calls, options and other rights or obligations (all hereinafter referred to as "options") pursuant to which the reporting person may buy or sell, or be required to buy or sell, securities

TITLE OF SECURITIES SUBJECT TO OPTION (Instruction 9)	2. CUSIP NUMBER (FOR SEC USE ONLY)	3. NATURE OF OPTION HEL (Instruction 12)

Explanation of items in tables:

January 10, 1973
DATE OF STATEMENT

NOTE: If the space provided in either table is insufficient, use a continuat
sheet which identifies the table and columns to which it relates.

d Other Rights on Obligations

of the company. However transferable warrants issued by the company which give the right to buy other securities of the company are to be reported in Table I. Options exempt under Rule 16a-6 need not be reported. *(See Instruction 6)*

LD	4. AMOUNT OF SECURITIES SUBJECT TO OPTION *(Instruction 10)*	5. PURCHASE OR SALE PRICE OF SECURITIES SUBJECT TO OPTION *(Instruction 13)*	6. DATE OF EXPIRATION OF OPTION

*U.S. Government Printing Office: 1972 — 457-606

DS 3006

VESCO & CO., INC.

By Patricia J. Vesco
SIGNATURE OF REPORTING PERSON

Patricia J. Vesco, President

ion

(1123a - 1127a)

Exhibit P-3

Affidavit of Ralph M. Lowenbach,
dated February 11, 1973.

1. I am a member of the firm of Hannoch, Weisman, Stern & Besser, Newark, New Jersey. My firm has rendered estate planning and tax advisory services to Robert L. Vesco and has served as counsel for Vesco & Co., Inc., a Delaware corporation.

2. I am advised that Mr. Laurence Richardson, in an affidavit submitted to this Court, has stated that Mr. Vesco "is taking steps to depart permanently from this Court's jurisdiction, which would deprive ICC of any recovery from Vesco;" and in support thereof, Mr. Richardson has cited the fact that Mr. Vesco has transferred a substantial portion of his stock in International Controls Corporation ("ICC") to Vesco & Co., Inc. This claim completely misrepresents the purpose and the effect of Mr. Vesco's transactions with Vesco & Co., Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEC[illegible]IES AND EXCHANGE COMMISSION,

Plaintiff,

-against- : 72 Civ. 5001 (CES)

ROBERT L. VESCO, et al.,

Defendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RALPH M. LOWENBACH, being duly sworn, states:

told, Mr. Vesco received $2,513,000 in par value preferred stock, or an average of slightly more than $3.00 a share in preferred stock for his ICC stock.

4. The purpose and effect of the transfer of Mr. Vesco's stock to Vesco & Co., Inc. was to put an upper limit on the value of Mr. Vesco's ICC holdings, for estate tax purposes, at the par value of the preferred stock (i. e., the appraised fair market value of ICC stock at the date of the exchanges), thus permitting substantially any future appreciation of such stock to inure to the benefit of the non-voting common shareholders -- Mr. Vesco's children. It is equally obvious, however, that upon a decline in the price of ICC stock, as has occurred in recent months, all equity in the company would shift to the preferred shareholder, namely Mr. Vesco.

3. Vesco & Co., Inc. was formed in 1972 to implement an estate planning technique which had been formulated as early as 1968 by my firm, with Lybrand, Ross Bros. & Montgomery. Following certain tax rulings, received April 26, 1972 and July 21, 1972, Mr. Vesco between July 21, 1972 and year-end, exchanged 800,000 shares of ICC common stock owned by him for a majority of the voting common stock, and all of the preferred stock, of Vesco & Co., Inc. In addition, 46,380 shares of ICC common stock held by Mr. Vesco as custodian for his minor children under the New Jersey Uniform Gifts to Minors Act was exchanged for a minority of the voting common stock and all of the non-voting stock of Vesco & Co., Inc. The par value preferred stock issued to Mr. Vesco was commensurate with the fair market value of the ICC stock exchanged therefor, as appraised by an investment banker. All

RALPH M. LOWENBACH

Sworn to before me this

11th day of February, 1973.

Notary Public

JACK O. [illegible]
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Mission [illegible] 1973

5. Contrary to Mr. Richardson's suggestion, the transaction is not an improper transfer of Mr. Vesco's assets, since he received shares of Vesco & Co., Inc. equal in par and liquidation value to the appraised value of the shares of ICC transferred by him. Indeed, since the price of ICC stock has declined in recent months, his position has improved to the extent of the ICC shares contributed by the children.

PAUL M. [illegible]

U. S. DIST. COURT
S. D. OF N. Y.
JUN 30 1975

3

PLAINTIFF'S

EXHIBIT

(1128a - 1131a)

Exhibit P-4

Affidavit of Milton H. Stern,
dated June 12, 1973.

Stern & Besser, Esqs., Newark, New Jersey. Our firm has served as counsel for Vesco & Company, Inc., a Delaware corporation.

2. Vesco & Company, Inc. was formed on July 12, 1972, to implement an estate planning technique which had been formulated as early as 1968 by my firm along with Lybrand Ross Brothers & Montgomery, Accountants. Following certain tax rulings received April 26, 1972 and July 21, 1972, Mr. Vesco, between July 21, 1972 and year end, exchanged 800,000 shares of ICC Common Stock owned by him for, in part, $2,513,000.00 in par value preferred stock of Vesco & Company, Inc. The par value preferred stock issued to Mr. Vesco was commensurate with the fair market value of the ICC stock exchanged therefor appraised by an investment banker. The purpose and effect of the transfer of Mr. Vesco's stock to Vesco & Company, Inc. was to put an upper limit on the value of Mr. Vesco's ICC holdings for estate tax purposes at the par value

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, et al, Defendants.	Index # 73 Civ. 2518 (CES) AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION, ETC.

STATE OF NEW JERSEY)
.SS:
COUNTY OF ESSEX)

MILTON H. STERN, of full age, being duly sworn, states:

1. I am a member of the firm of Hannoch, Weisman,

Vesco, with one-fourth of said shares being held for each child. Similarly, Patricia J. Vesco as Custodian for each of the above-named children owns 20,000 shares of Class B Non-Voting Common Stock with one-fourth the said amount for each child.

4. It is not now nor has it ever been licensed or authorized to do business in the State of New York; it does not now nor has it ever done business in the State of New York; and it does not have nor has it ever had any offices in the State of New York.

5. Upon information and belief, Vesco & Company, Inc. was served in this matter only by service upon the registered agent of the corporation in Delaware. Although plaintiff's

of the preferred stock (i.e. the appraised fair market value of ICC stock at the date of the exchange), thus permitting any future appreciation of such stock to inure to the benefit of the non-voting common shareholders.

3. Thus, the basic activity of Vesco & Company, Inc. consists of its ownership of the stock in ICC. As of the date hereof, the record holdings of the stock of Vesco & Company, Inc. are as follows: Robert L. Vesco owns 2,513 shares of the $1,000.00 par value preferred stock; the 48 shares of Class A Voting Common Stock are owned by Patricia J. Vesco as Custodian for Daniel Vesco, Anthony D. Vesco, Daun L. Vesco, and Robert B.

NOTARY PUBLIC OF U. S.
My Commission Expires Nov. 18, 1974

attorneys knew that we were counsel to Venco & Company, Inc., received no notice whatsoever of any application for a temporary restraining order.

MILTON H. STERN

Sworn and Subscribed to
before me this 12th day
of June, 1973.

ANNA WHITE

Exhibit P-5

Securities and Exchange Form 4,
dated August 10, 1972.

(1132a - 1134a)

SECURITIES AND EXCHANGE COMMISSION Washington, D. C. 20549

FORM 4 Statement of Changes in Beneficial Ownership of Securities

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

1. NAME AND BUSINESS ADDRESS OF REPORTING PERSON	2. STATE OF INCORPORATION
VESCO, ROBERT L. (LAST, FIRST, MIDDLE)	N/A
200 Fairfield Road	5. IRS OR SS IDENTIFYING NUMBER OF REPORTING PERSON
Fairfield, New Jersey 07006 (ZIP CODE)	386 - 32 - 9035

TABLE I. Securities Bought, Sold

Furnish the information required by the following table as to securities of the company bought or sold or otherwise acquired or disposed of by the reporting person during the month for which this statement is filed *(See Instruction 5)* and as to securities

1. TITLE OF SECURITIES *(Instr. 8)*	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION *(Instr. 9)*	4. AMOUNT OF SECURITIES ACQUIRED OR DISPOSED OF *(Instr. 10)*	5. NATURE OF SECU OR DISPO
Common Stock ($.10 par value)		7/21/72	(350,080 shares)	Di
Common Stock ($.10 par value)		7/21/72	(20,292 shares)	Ind
Common Stock ($.10 par value)		7/21/72	370,380 shares	Ind

3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED	4. NAME OF COMPANY
N/A MONTH DAY YEAR	INTERNATIONAL CONTROLS CORP. RECD - S.E.C. AUG 28 1972

6. STATEMENT FOR CALENDAR MONTH OF	7. DATE OF LAST PREVIOUS STATEMENT	8. RELATIONSHIPS OF REPORTING PERSON TO COMPANY (Instr. 4)
July 1972 MONTH YEAR	April 1 1971 MONTH DAY YEAR	Chairman of the Board of Directors (Chief Exec. Officer) and beneficial owner of more than 10% of the Company's common stock.

old or Otherwise Acquired or Disposed of

the ties of the company beneficially owned, directly or indirectly, at the end of the month.
son However, transactions involving the acquisition or disposition of puts, calls, options or
uri- other rights or obligations to buy or sell securities of the company shall be reported in Table II.

OF OWNERSHIP RITIES ACQUIRED OSED OF (Instr. 11)	6. CHARACTER OF TRANSACTION REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE PER SHARE OR OTHER UNIT (Instr. 13)	8. AMOUNT OWNED AT END OF MONTH (Instr. 10)	9. NATURE OF OWNERSHIP OF SECURITIES OWNED AT END OF MONTH (Instr. 11)
rect	Private Sale	N/A	578,875 shares	Direct
irect	Private Sale	N/A	26,088 * shares	Indirect
irect	Private Purchase	N/A	370,380 ** shares	Indirect

TABLE II. Puts, Calls, Opt

If during the month for which this statement is filed the reporting person acquir
disposed of any put, call, option or other right or obligation (all hereinafter referred
"options") to buy or sell, or be required to buy or sell, securities of the company, fu
the information required by the following table. *(See Instruction 5)* However, the acq

1. TITLE OF SECURITIES SUBJECT TO OPTION *(Instr. 8)*	2. CUSIP NUMBER *FOR SEC USE ONLY*	3. DATE OF TRANSACTION *(Instr. 9)*	4. NATURE OPTION *(Instr.*

1134a

Explanation of items in the tables:

* Held as custodian for minor children

** Held by Vesco & Co., Inc. in which the undersi

NOTE: The transaction reported in this statement is
undersigned and his minor children to a corpor
is not to be deemed an admission that the unde
except as to the 578,875 shares of Common Stoc

August 10, 1972
DATE OF STATEMENT

Rob

NOTE: If the space provided in either table is insufficient, use a continuation

tions and Other Rights or Obligations

ed or to as rnish quisi-

tion or disposition of transferable warrants issued by the company which give the right to buy securities of the company are to be reported in Table I. Options exempted by Rule 16a-6 need not be reported.

E OF 15)	5. AMOUNT OF SECURITIES SUBJECT TO OPTION (Instr. 10)	6. CHARACTER OF TRANSACTION, IF ANY, REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE OF SECURITIES SUBJECT TO OPTION (Instr. 13)	8. DATE OF EXPIRATION OF OPTION

*U.S.Government Printing Office: 1972 — 457-606 DS 5013

igned and his minor children hold all of the stock.

a transfer of common stock of the Company owned by the ration entirely owned by them. The filing of this statement ersigned owns any of the shares included in the statement, ck owned directly by him.

bert L. Vesco SIGNATURE OF REPORTING PERSON

(1135a - 1137a)

Exhibit P-6

Securities and Exchange Form 4,
dated January 10, 1973.

(1135a - 1137a)

SECURITIES AND EXCHANGE COMMISSION • WASHINGTON, D. C. 20549

1136a

FORM 4 Statement of Changes in Beneficial Ownership of Securities

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

1. NAME AND BUSINESS ADDRESS OF REPORTING PERSON	2. STATE OF INCORPORATION	3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED	4. NAME OF COMPANY
VESCO ROBERT L. (LAST FIRST MIDDLE)	Florida	N/A (MONTH DAY YEAR)	JAN 4 1973 INTERNATIONAL CONTROLS CORP.
c/o HANNOCH, WEISMAN, STERN & BESSER 744 BROAD STREET NEWARK, NEW JERSEY 07102 (ZIP CODE)	5. IRS OR SS IDENTIFYING NUMBER OF REPORTING PERSON: 386-32-9035	6. STATEMENT FOR CALENDAR MONTH OF: December 1972 (MONTH YEAR)	7. DATE OF LAST PREVIOUS STATEMENT: August 10 1972 (MONTH DAY YEAR)

8. RELATIONSHIPS OF REPORTING PERSON TO COMPANY (Instr. 4) ☐
Member of the Board of Directors and beneficial owner of more than 10% of the Company's common stock. ☐

TABLE I. Securities Bought, Sold or Otherwise Acquired or Disposed of

Furnish the information required by the following table as to securities of the company bought or sold or otherwise acquired or disposed of by the reporting person during the month for which this statement is filed (See Instruction 5) and as to securities of the company beneficially owned, directly or indirectly, at the end of the month. However, transactions involving the acquisition or disposition of puts, calls, options or other rights or obligations to buy or sell securities of the company shall be reported in Table II.

1. TITLE OF SECURITIES (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. AMOUNT OF SECURITIES ACQUIRED OR DISPOSED OF (Instr. 10)	5. NATURE OF OWNERSHIP OF SECURITIES ACQUIRED OR DISPOSED OF (Instr. 11)	6. CHARACTER OF TRANSACTION REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE PER SHARE OR OTHER UNIT (Instr. 13)	8. AMOUNT OWNED AT END OF MONTH (Instr. 10)	9. NATURE OF OWNERSHIP OF SECURITIES OWNED AT END OF MONTH (Instr. 11)
Common Stock ($.10 par value)		12/29/72	(449,912 shares)	Direct	Private Sale	No cash	128,963 shares	Direct
Common Stock ($.10 par value)		12/29/72	(26,088* shares)	Indirect (custodian for minor children)	Private Sale	No cash	0 shares	Indirect
Common Stock ($.10 par value)		12/29/72	466,000 shares	Indirect	Private Purchase	No cash	846,380**	Indirect

Item 4 (Continued)

TABLE II. Puts, Calls, Options and Other Rights or Obligations

If during the month for which this statement is filed the reporting person acquired or disposed of any put, call, option or other right or obligation (all hereinafter referred to as "options") to buy or sell, or be required to buy or sell, securities of the company, furnish the information required by the following table. *(See Instruction 5)* However, the acquisition or disposition of transferable warrants issued by the company which give the right to buy securities of the company are to be reported in Table I. Options exempted by Rule 16a-6 need not be reported.

1. TITLE OF SECURITIES SUBJECT TO OPTION *(Instr. 8)*	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION *(Instr. 9)*	4. NATURE OF OPTION *(Instr. 15)*	5. AMOUNT OF SECURITIES SUBJECT TO OPTION *(Instr. 10)*	6. CHARACTER OF TRANSACTION, IF ANY, REPORTED *(Instr. 12)*	7. PURCHASE OR SALE PRICE OF SECURITIES SUBJECT TO OPTION *(Instr. 13)*	8. DATE OF EXPIRATION OF OPTION

1137a

*U.S.Government Printing Office: 1972 — 457-606 GS 1613

Explanation of items in the tables:

* Held as custodian for minor children

** Held by Vesco & Co., Inc. in which the undersigned and his wife as custodian for his minor children hold all of the stock.

NOTE: The transaction reported in this statement is a transfer of common stock of the Company owned by the undersigned and his minor children to a corporation entirely owned by the undersigned and his wife as custodian for his minor children in exchange for stock of the latter Corporation. The filing of this statement is not to be deemed an admission that the undersigned owns any of the shares included in the statement, except as to the 128,963 shares of Common Stock owned directly by him.

January 10, 1973
DATE OF STATEMENT

Robert L. Vesco
SIGNATURE OF REPORTING PERSON

If the space provided in either table is insufficient, use a continuation

(1138a - 1140a)

SECURITIES AND EXCH

FORM 4 Statement of Cha

Filed pursuant to Section 16(a)
Public Utility Holding Company Act

Exhibit P-7

Securities and Exchange Form 4,
dated April 27, 1972.

(1138a - 1140a)

ANGE COMMISSION • Washington, D.C. 20549

nges in Beneficial Ownership of Securities

of the Securities Exchange Act of 1934, Section 17(a) of the
of 1935, or Section 30(f) of the Investment Company Act of 1940

par value		-	-	minor children)		-		-	4,638 shs.	minor children)	

1. NAME AND BUSINESS ADDRESS OF REPORTING PERSON	2. STATE OF INCORPORATION	3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED	4. NAME OF COMPANY
Vesco Robert L. (LAST FIRST MIDDLE) 200 Fairfield Road Fairfield, New Jersey 07006 (ZIP CODE)	New Jersey	____ ____ ____ (MONTH DAY YEAR)	Fairfield General Corporation MAY - 1 1972
	5. IRS OR SS IDENTIFYING NUMBER OF REPORTING PERSON	6. STATEMENT FOR CALENDAR MONTH OF	7. DATE OF LAST PREVIOUS STATEMENT
	386 - 32 - 9035	March 1972 (MONTH YEAR)	4 26 72 (MONTH DAY YEAR)

8. RELATIONSHIPS OF REPORTING PERSON TO COMPANY (Instr. 4) ☐
Director

TABLE I. Securities Bought, Sold or Otherwise Acquired or Disposed of ☐

Furnish the information required by the following table as to securities of the company bought or sold or otherwise acquired or disposed of by the reporting person during the month for which this statement is filed *(See Instruction 5)* and as to securities of the company beneficially owned, directly or indirectly, at the end of the month. However, transactions involving the acquisition or disposition of puts, calls, options or other rights or obligations to buy or sell securities of the company shall be reported in Table II.

1. TITLE OF SECURITIES (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. AMOUNT OF SECURITIES ACQUIRED OR DISPOSED OF (Instr. 10)	5. NATURE OF OWNERSHIP OF SECURITIES ACQUIRED OR DISPOSED OF (Instr. 11)	6. CHARACTER OF TRANSACTION REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE PER SHARE OR OTHER UNIT (Instr. 13)	8. AMOUNT OWNED AT END OF MONTH (Instr. 10)	9. NATURE OF OWNERSHIP OF SECURITIES OWNED AT END OF MONTH (Instr. 11)
ommon Stock, no par value		3/9/72	72,000	Direct	Other *	*	20,896 shs.	Direct
ommon Stock, no				Indirect (Custodian for				Indirect (Custodian for

planation of items in the tables: * Table I, Columns 6 and 7

*U.S.Government Printing Office: 1972 — 457-606

n March 9, 1972, Mr. Vesco transferred (in equal amount) 72,000 of the 92,896 shares of Fairfield General orporation Common Stock owned by him to separate irrevocable trusts which he and his wife created for their eir minor children, Daniel William Vesco, Anthony Donald Vesco, Dawn Lee Vesco and Robert Bruce Vesco.

' Table I, Column 8

:ling of this statement is not to be deemed an admission that the undersigned owns any of the foregoing exce),896 shares of common stock.

April 27, 1972
DATE OF STATEMENT

SIGNATURE OF REPORTING PERSON

: *If the space provided in either table is insufficient, use a continuation* *sheet which identifies the table and column to which it relates.*

TABLE II. Puts, Calls, Options and Other Rights or Obligations

If during the month for which this statement is filed the reporting person acquired or disposed of any put, call, option or other right or obligation (all hereinafter referred to as "rights") to buy or sell, or be required to buy or sell, securities of the company, furnish the information required by the following table. *(See Instruction 5)* However, the acquisition or disposition of transferable warrants issued by the company which give the right to buy securities of the company are to be reported in Table I. Options exempted by Rule 16a-6 need not be reported.

1. TITLE OF SECURITIES SUBJECT TO OPTION *(Instr. 8)*	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION *(Instr. 9)*	4. NATURE OF OPTION *(Instr. 15)*	5. AMOUNT OF SECURITIES SUBJECT TO OPTION *(Instr. 10)*	6. CHARACTER OF TRANSACTION, IF ANY, REPORTED *(Instr. 12)*	7. PURCHASE OR SALE PRICE OF SECURITIES SUBJECT TO OPTION *(Instr. 13)*	8. DATE OF EXPIRATIO OF OPTION

1140d

S 5010

pt

Exhibit P-8

Order dated March 18, 1971 In the Matter of International Controls Corp., et als.

(1141a - 1144a)

The Commission's public official files disclose that:

A. International Controls Corp. ("ICC"), a Florida corporation with principal offices at 200 Fairfield Road, Fairfield, New Jersey, has filed a registration statement on Form S-1 on October 14, 1970 (File No. 2-38593). Amendments Nos. 1 and 2 were filed December 30, 1970 and March 5, 1971 respectively. On March 8, 1971, ICC amended this registration statement to delete the amendment filed pursuant to Rule 473 under the Securities Act of 1933 delaying the effective date of such statement. In addition, ICC had filed on December 31, 1969, a registration statement on Form S-1 (No. 2-35907), which ICC amended on Nov. 13, 1970.

B. Fairfield Aviation Corporation ("Fairfield"), a New Jersey corporation and wholly-owned subsidiary of ICC, filed a Registration Statement on Form S-1 December 29, 1970.

C. ICC Investments, Limited ("IIL") is a Bahamian corporation organized in 1970, and a wholly-owned subsidiary of ICC.

D. Robert L. Vesco ("Vesco") is Chairman of the Board of ICC and I.O.S., Ltd. and President of Fairfield and IIL.

E. I.O.S., Ltd. ("IOS"), was registered with the Commission as a broker-dealer from 1960 until June 5, 1967 when, in accordance with an Offer of Settlement, and by Order dated May 23, 1967, (Securities Exchange Act Release No. 8083) IOS and others agreed not to do any business

DIRECTING A PRIVATE OR PUBLIC INVESTIGATION AND IS BEING FURNISHED TO YOU AT YOUR REQUEST FOR YOUR OWN USE.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 18, 1971

In the Matter of INTERNATIONAL CONTROLS CORP. I.O.S., LTD. I.C.C. INVESTMENTS, LIMITED ROBERT L. VESCO HALE BROTHERS, ASSOCIATES, INC. BUTLERS BANK, LIMITED FAIRFIELD AVIATION CORPORATION File No. HO-520	ORDER DIRECTING EXAMINATION AND PRIVATE INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

of such securities, untrue statements of material facts and omitted to state material facts necessary to make the statements made, not misleading concerning, among other things:

1. the terms and conditions of transactions and agreements between ICC, Vesco, IOS, Butlers Bank, Limited ("Butlers"), Investment Properties International, Ltd., King Resources Co., IIL, Fairfield, Bernard Cornfeld ("Cornfeld"), Hale Brothers, Associates, Inc.;

2. the terms and circumstances of a proposed plan by ICC and Vesco to organize a corporation to acquire IOS and affiliated entities;

3. the financial condition of IOS and its affiliated companies;

4. the domination and control of Vesco over the affairs of IOS and its affiliated entities;

5. the terms and conditions of the sale of IOS securities by Cornfeld and the present beneficial ownership of such securities;

6. the effect of an order issued by the Commission on May 23, 1967 in the matter of IOS, Ltd., et al. on ICC and its principal officers; and

7. the facts and circumstances surrounding inducements made to persons and investment firms in connection with the

[illegible] OF ITS OFFICE
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USE.

in the U. S. or with U. S. nationals abroad. ICC is now a Canadian corporation engaged in various financial, real estate, banking, and securities businesses outside the U. S.

II

Members of its staff have reported information to the Commission which tends to show that:

A. ICC, IOS, Vesco, and others have been and are offering to sell and selling to members of the public securities with respect to which no registration statement is on file with the Commission or in effect.

B. In connection with the securities described in Paragraph A above and in connection with a registration statement and proposed prospectus for the offer and sale of certain securities of ICC, IOS, ICC and others have included in statements in such registration statement and made to investors, sellers and prospective purchasers and sellers of such securities, untrue statements of material facts and omitted to

and hereby

ORDERS, pursuant to the provisions of Sections 8(e) and 20(a) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934, that an examination and private investigation be made to determine whether the aforesaid person or any other persons have engaged or are about to engage in any of the reported acts or practices or in any acts or practices of similar purport or object; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 19(b) of the Securities Act of 1933 and Section 21(b) of the Securities Exchange Act of 1934, that for the purposes of such investigation and examinati Stanley Sporkin, Leonard H. Rossen, Alfred E. T. Rusch, Samuel H. Feder, Steven H. Berkowitz, Thomson von Stein and Robert Laprade, and each of them, is hereby designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Rosalie V. Schneider

Rosalie V. Schneider
Recording Secretary

[illegible] PRIVATE OR NON PUBLIC [illegible] AND IS BEING FURNISHED TO YOU AT YOUR REQUEST FOR YOUR OWN USE.

establishment of an entity to take over control of IOS and its related entities.

C. ICC, IOS, Vesco, Hale, IIL and other persons may be in violation of the Commission Order dated May 23, 1967 in the matter of ICC, Ltd., et al.

D. Vesco, ICC, IOS, and others may be engaged in acts and practices involving allocation of brokerage business of publicly held investment companies for the personal benefit of Vesco and the management of such funds, and in connection therewith, no disclosure has been made of such activities to the investment companies in question or other shareholders.

E. While engaged in the above activities, such persons, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce and of the means and instrumentalities of interstate commerce.

The Commission, having considered the staff report and deeming such acts and practices, if true, to be in possible violation of Section 5 of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, finds it necessary and appropriate

Exhibit P-9

Resignation letter dated February 7, 1973
signed by Robert L. Vesco.

(1145a - 1152a)

Richardson, was willing to resign. Since Mr. Richardson now seeks to impugn my intention to disaffiliate myself from ICC, I have concluded that the best interests of the corporation and the shareholders require that I resign effective immediately. This letter will serve as my resignation.

Mr. Richardson's allegations that I am seeking to control ICC are untrue, and are belied by my efforts to divest myself of all my interest in ICC. I returned to the Board in October 1972 with Richardson's concurrence only because of the considerations raised by corporate counsel with regard to the contemplated action by the SEC. My objective has been to sever all connections with ICC as soon as possible, and not to attempt to direct the corporation's affairs.

1146a

February 7, 1973

Board of Directors
International Controls Corp.
200 Fairfield Road
Fairfield, New Jersey

Gentlemen:

At the meeting of the Board of Directors on January 23, 1973, I declared my intention to resign as a director prior to the commencement of the trial in the SEC action on March 5, 1973. At the meeting of the Board on February 5, 1973, I announced that I was considering resigning immediately, regardless of whether any of the other director-defendants, including Mr.

officers and a new treasurer. Mr. Mailman suggested that all directors named in the SEC action, including Mr. Richardson, resign from the Board, so that the company's affairs could be governed by a Board not involved in the SEC charges. Mr. Richardson and his attorney were present and voiced no opposition to the Board's continued consideration to the Mailman-Sticco transaction. Indeed, Mr. Richardson stated that he would call Mr. Mailman the next day to obtain a complete list of his director nominees and their resumes. The Board also asked the Audit Committee and Executive Committee to make recommendations with respect to the matters relating to me, and the corporation's posture in the lawsuit. At no time did Mr. Richardson or his counsel suggest any disagreement

1147a

As you are aware, I personally have offered to sell my approximately 120,000 shares of ICC stock to Mr. Elmer Sticco and others; and Vesco & Co., Inc. has engaged in negotiations with Mr. Norton Mailman to vest in him for a period of time all rights of its approximately 840,000 shares to vote for directors of the company. Both Mr. Mailman and Mr. Sticco are completely unaffiliated with me, and their independence should be beyond challenge.

Messrs. Mailman and Sticco met with the Board on Monday afternoon, February 5, 1973 to discuss their intentions with respect to the company, including certain suggestions for directors and for a new chief executive, new chief operating

For my part, I remain willing and eager to divest myself of my shares. While you are meeting today, I and the attorneys for Vesco & Co., Inc. are meeting with Messrs. Mailman and Sticco, and their attorneys, with a view toward reviewing letters of intent. It is my hope that the publicity and time pressures created by Mr. Richardson's action will not frustrate this transaction.

The extraordinary concessions which I and Vesco & Co. have made to Messrs. Mailman and Sticco reflect our desire to free ICC from even the appearance of any influence by me. As the largest shareholders of the company, our paramount interest is the rehabilitation of the corporation's reputation.

As for Mr. Richardson's specific charges, I moved that the Board create the Audit Committee, the majority of whose members Mr. Richardson concedes are independent. The

with this procedure, or any intimation that they contemplated applying by noon the next day for a receivership. It is clear from the volume of Mr. Richardson's papers that while he was apparently content to have the Board await the recommendations of the Audit and Executive Committees and to pursue consideration of the Mailman-Sticco proposals, he was planning to seek a receivership. The motion for receivership, filed without any prior indication to the Board, represents a transparent effort to gain a litigation advantage and to perpetuate Mr. Richardson's power by attempting to torpedo the Mailman-Sticco transaction.

circumvent the Board of the Audit Committee.

The Audit Committee lost no time in acting to carry out the mandate of the February 5 Board meeting. On the morning of February 6, Harry Sears, Esq., a member of the committee, telephoned my attorney to discuss the status of my consulting agreement. My attorney told him that he would strongly recommend that I accept a suspension of payments under the consulting agreement, and that he believed I would agree. This discussion occurred before there was any warning of Mr. Richardson's action and is further evidence of my willingness to eliminate sources of friction which were interfering with the conduct of the corporation's affairs and the defense of the lawsuit.

matters raised by Mr. Richardson have been submitted to the Audit Committee and I have not attempted to influence their objective judgment on the facts. Accordingly, I have not responded to Mr. Richardson's self-serving and incorrect letters to the Audit Committee. The only threats have been those made by Mr. Richardson against me. Notwithstanding my resignation from the Board, I remain willing to cooperate with the Audit Committee and the corporation's counsel in these matters. Unlike Mr. Richardson, I am not in the habit of bringing my trial counsel to Board meetings. I have never asked the corporation to releas any claims it may have against me. Unlike Mr. Richardson, I have never sought to

pending a decision on the merits of the SEC's application for a receivership for ICC, to be tried on March 5, 1973. The return of the advance and the offer of suspension of payments are without prejudice to assertion of all rights with respect to the corporation, including claims under the consulting agreement and for indemnification. I hope that Mr. Richardson will follow this example.

Contrary to Mr. Richardson's suggestion that I have access to corporate funds, I have not been a signatory on any of the corporation's bank accounts since well before the commencement of the SEC action. Prior to Mr. Richardson's action, my credit cards either had been returned or were in the process of being returned. I hold no corporate offices; my relationship to the corporation is publicly spelled out in my consulting agreement with the company.

While I am confident that the charges against me will be disproved at trial, I believe that it is now in the best interests of the corporation and the shareholders that I not press my claim for indemnification or payment of my consulting fees and expenses at this time. Notwithstanding the fact that the Board has not acted on my previous motion that all indemnification payments to all defendant-directors be suspended and all prior advances be returned, I have this day returned the approximately $44,000 in indemnification advances to me and I will not accept any further payments from the corporation for indemnification or consulting fees and expenses

Richardson filed his motion although I was given only one hour's notice of the proceeding. I shall be in court for the trial. It is imperative that I begin my preparation for trial free from Mr. Richardson's harassing tactics in the boardroom and the courtroom.

I regret very much that the unsupported allegations against me may have caused embarrassment to the other members of the Board. I am hopeful that Mr. Richardson's efforts to extricate himself from the SEC lawsuit at the expense of the corporation will not discourage new directors from taking office, or further damage the shareholders.

Sincerely,

Robert L. Vesco

1151a

Finally, Mr. Richardson's assertion in his affidavit that I am taking steps to depart from this Court's jurisdiction is a blatant and knowing falsehood. Indeed, having urged me to divest myself of my interest in the company, Mr. Richardson now seeks to twist my efforts to sell my shares into an indication of preparation for flight. As I have previously advised you, because of the SEC's lawsuit, my plans and those of my family to spend time in Costa Rica have been curtailed.

Let me state again, that it is my intention to defend vigorously all charges against me on the merits in the courts of the United States. I was in court the day Mr.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
JUN 30 1975

Petct

PLAINTIFF'S

(1153a - 1160a)

Exhibit P-11

1973 Corporate Tax Return of Vesco & Co., Inc.

(1153a - 1160a)

DEDUCTIONS

18	Interest	18	
19	Contributions (not over 5% of line 30 adjusted per instructions—attach schedule)	19	
20	Amortization (attach schedule)	20	
21	Depreciation (Schedule G)	21	1760
22	Depletion	22	
23	Advertising	23	
24	Pension, profit-sharing, etc. plans (see instructions)	24	
25	Employee benefit programs (see instructions)	25	
26	Other deductions (attach schedule) VEHICLE REGISTRATIONS	26	60
27	TOTAL deductions—Add lines 12 through 26	27	1820
28	Taxable income before net operating loss deduction and special deductions (line 11 less line 27)	28	(1951)
29	Less: (a) Net operating loss deduction (see instructions—attach schedule) 29(a)		
	(b) Special deductions (Schedule I) 29(b)		
30	Taxable income (line 28 less line 29)	30	(1951)

TAX

31	TOTAL TAX (Schedule J)	31	NONE
32	Credits: (a) Overpayment from 1972 allowed as a credit		
	(b) 1973 estimated tax payments		
	(c) Less refund of 1973 estimated tax applied for on Form 4466 ( )		
	(d) Tax deposited with Form 7004 (attach copy)		
	(e) Tax deposited with Form 7005 (attach copy)		
	(f) Credit from regulated investment companies (attach Form 2439)		
	(g) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)		
33	TAX DUE (line 31 less line 32). See instruction G for depositary method of payment	33	
34	OVERPAYMENT (line 32 less line 31)	34	
35	Enter amount of line 34 you want: Credited to 1974 estimated tax ▶ Refunded ▶	35	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.

Date Signature of officer Title

Date Signature of individual or firm preparing the return Preparer's address Emp. Ident. or Soc. Sec. No.

1154a

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1973 or other taxable year beginning JULY 1, 1973, ending JUNE 30, 1974
(PLEASE TYPE OR PRINT)

1973

Check if a—
A Consolidated return ☐
B Personal Holding Co. ☐
C Business Code No. (See page 7 of instructions.) 6748

Name: VESCO & CO., INC.
Number and street: P.O. BOX AK
City or town, State, and ZIP code: DENVILLE, NEW JERSEY 07834

D Employer Identification No. 22-1990512
E County in which located: MORRIS
F Enter total assets from line 14, column (D), Schedule L (See instruction R) $2,671,215

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction N.

GROSS INCOME	1 Gross receipts or gross sales ..... Less: Returns and allowances	1	
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	2	
	3 Gross profit	3	
	4 Dividends (Schedule C)	4	
	5 Interest on obligations of the United States and U.S. instrumentalities	5	
	6 Other interest	6	
	7 Gross rents	7	
	8 Gross royalties	8	
	9 (a) Net capital gains—(separate Schedule D)	9(a)	
	(b) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)	9(b)	
	10 Other income (see instructions—attach schedule)	10	
	11 TOTAL income—Add lines 3 through 10	11	
	12 Compensation of officers (Schedule E)	12	
	13 Salaries and wages (not deducted elsewhere)	13	
	14 Repairs (see instructions)	14	
	15 Bad debts (Schedule F if reserve method is used)	15	
	16 Rents	16	
	17 Taxes (attach schedule) DELAWARE	17	131

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	4. Current year's provision	5. Recoveries	6. Amount charged against reserve	7. Reserve for bad debts at end of year
1968						
1969						
1970						
1971						
1972						
1973						

Schedule G **Depreciation (See instructions for Schedule G)** Note: If depreciation is computed by using the Class Life (ADR) System for assets placed in service after 1970, or the Guideline Class Life System for assets placed in service before 1971, you must file Form 4832 (Class Life (ADR) System) or Form 5006 (Guideline Class Life System) with your return. Except as otherwise expressly provided in income tax regulations sections 1.167(a)–11(b)(5)(vi) and 1.167(a)–12, the provisions of Revenue Procedures 62–21 and 65–13 are not applicable for taxable years ending after 1970.

Check box(es) if you made an election this taxable year to use ☐ Class Life (ADR) System and/or ☐ Guideline Class Life System. See Publication 534

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)						
2 Depreciation from Form 4832						
3 Depreciation from Form 5006						
4 Other depreciation:						
Buildings						
Furniture and fixtures						
Transportation equipment	MAR 1973	$2,280	1760	S.L.	3 YRS	1760
Machinery and other equipment						
Other (specify)						
5 Totals		$2,280				1760
6 Less amount of depreciation claimed in Schedule A						
7 Balance—Enter here and on line 21, page 1						1760

Schedule H **Summary of Depreciation (Other than additional first-year depreciation)**

	Straight line	Declining balance	Sum of years digits	Units of production	Other (specify)	Total
1 Depreciation from Form 4832						
2 Depreciation from Form 5006						
3 Other	1760					1760

Schedule A Cost of Goods Sold (See instruction 2)

1 Inventory at beginning of year	
2 Merchandise bought for manufacture or sale	
3 Salaries and wages	
4 Other costs (attach schedule)	
5 Total	
6 Less inventory at end of year	
7 Cost of goods sold—Enter on line 2, page 1	

Method of inventory valuation

Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory? ☐ Yes ☐ No

If "Yes," attach an explanation.

Schedule C Dividends (See instruction 4)

1 Domestic corporations subject to 85% deduction	
2 Certain preferred stock of public utilities	
3 Foreign corporations subject to 85% deduction	
4 Dividends from wholly-owned foreign subsidiaries subject to 100% deduction (section 245(b))	
5 Other dividends from foreign corporations	
6 Includable income from controlled foreign corporations (Subpart F; attach Forms 3646)	
7 Foreign dividend gross-up (section 78)	
8 Qualifying dividends received from affiliated groups and subject to the 100% deduction (section 243(a)(3))	
9 Qualifying dividends received from affiliated groups and subject to the provisions of section 1564(b)	
10 Taxable dividends from a DISC or former DISC not included in line 1 (section 246(d))	
11 Other dividends	
12 Total—Enter here and on line 4, page 1	

Schedule E Compensation of Officers (See instruction 12)

1. Name of officer	2. Social security number	3. Title	4. Time devoted to business	Percent of corporation stock owned 5. Common	6. Preferred	7. Amount of compensation	8. Expense account allowances
Total compensation of officers—Enter here and on line 12, page 1							

Schedule F Bad Debts—Reserve Method (See instruction 15)

		Amount added to reserve				

3. At least 50% of the tax tentatively determined to be due (line 3(c)) must be deposited on or before the original due date of the corporation's income tax return. See instructions for depositary method of payment.

A penalty for failure to pay tax will generally be imposed upon any corporation which files Form 7004 and underestimates by more than 10% its tentative amount of income tax for the taxable year. See instruction G.

(a) Tentative amount of income tax for the taxable year including any— Minimum tax on tax preference items; Personal holding company tax; Tax from recomputing a prior year investment credit; Tax from recomputing a prior year work incentive (WIN) credit; Foreign tax credit; Investment credit; Work incentive (WIN) credit		None
(b) Less: (i) Overpayment from prior year allowed as a credit		
(ii) Estimated tax payments (deposits) for the taxable year		
(iii) Less refund of estimated tax for the taxable year applied for on Form 4466	( )	
(iv) Credit from regulated investment companies		
(v) Credit for U.S. tax on special fuels, nonhighway gas and lubricating oil.		
(c) Balance due		
(d) Amount required to be deposited—at least 50% of line 3(c)		None

SIGNATURE (See instruction 9)

Under penalties of perjury, I declare that I have been authorized by the above-named corporation to make this application, that to the best of my knowledge and belief the statements made herein are true, correct, and complete, and that I am: ☐ an officer of the corporation; ☐ a duly authorized agent holding a power of attorney; ☐ an agent enrolled to practice before the Internal Revenue Service; ☐ an attorney in good standing of the bar of the highest court of _____ (Specify jurisdiction); or ☒ a certified public accountant duly qualified to practice in New Jersey (Specify jurisdiction)

(Signature of officer or agent)	(Title)	(Date)

A Copy of This Application Must Be Attached to the Corporation's Income Tax Return

1156a

Form **7004**
(Rev. Oct. 1973)
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time to File Corporation Income Tax Return

(Under section 6081(b) of the Internal Revenue Code)

Note: *Prepare this form in duplicate. File the original with the Internal Revenue Service Center where you are required to file your income tax return. Attach the duplicate to your income tax return.*

A penalty for failure to pay tax will generally be imposed upon any corporation which files Form 7004 and underestimates by more than 10% its tentative amount of income tax for the taxable year. See instruction 6.

Name of corporation
Vesco & Co., INC.

Employer Identification Number
22-1990512

Number and street
P.O. Box AK

Check type of return to be filed:
- ☒ Form 1120
- ☐ Form 1120S
- ☐ Form 1120L
- ☐ Form 990-C
- ☐ Form 1120M
- ☐ Form 990-T
- ☐ Form 1120F—Check here ☐ if you do not have an office or place of business in the U.S.

City or town, State, and ZIP code
DENVILLE New Jersey 07834

An automatic 3-month extension of time until Dec 15, 1974, is hereby requested in which to file the income tax return of the corporation named above for the taxable year beginning July 1, 1973, and ending June 30, 1974

1. If the taxable year above is for a period of less than 12 months, check here if the short period is due to . . . . . ☐ change in accounting period ☐ filing of initial tax return ☐ filing of final tax return

2. Does this application also cover subsidiaries to be included in a consolidated return? . . . . . Yes ☐ No ☐
If "Yes," complete the following:

Name and Address of Each Member of the Affiliated Group	Employer Identification No.

you may follow the procedure in instruction J by checking this box ☐ and completing the statement on the back of this form.

5. Name in which account is maintained	6. Name of bank or other person with whom account is maintained
7. Number and other account designation, if any	8. Address of office or branch where account is maintained

9. Type of account. (If not certain of English name for the type of account, give the foreign language name and describe the nature of the account. Attach additional sheets if necessary.)

☐ Savings, demand, or checking ☐ Securities ☐ Other (specify) .....

10. Maximum value of account (see instruction H)

☐ Under $50,000 ☐ $50,000 to $100,000 ☐ Over $100,000 ☐ Unable to determine (attach explanation)

Instructions

A. Who Must File a Return.—Each United States person who has a financial interest in or signature authority or other authority over a bank, securities, or other financial account in a foreign country at any time during a taxable year, must report that relationship for each taxable year. Do this by checking the appropriate box on the Form 1040, 1041, 1065, 1120, 1120L, 1120M, or 1120S you file for the taxable year and by filing with that return an information return on Form 4683 for that year.

B. United States Person.—The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, and (4) a domestic estate or trust.

C. Account in a Foreign Country.—A "foreign country" includes all geographical areas located outside the United States, its possessions, and Puerto Rico.

Report any account maintained with a branch, agency, or other office of a bank (except a military banking facility as defined in instruction D) or broker or dealer in securities that is located in a foreign country, even if it is a part of a United States bank or other institution. Do not report any account maintained with a branch, agency, or other office of a foreign bank or other institution that is located in the United States, its possessions, or Puerto Rico.

D. Military Banking Facility.—Do not consider as an account in a foreign country an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution an

(Continued on back)

Form 4683
(Rev. Nov. 1971)
Department of the Treasury
Internal Revenue Service

U.S. Information Return on Foreign Bank, Securities, and Other Financial Accounts

1157a

▶ Attach to your tax return.

For the calendar year 19..... or other taxable year beginning JULY 1, 1973 and ending JUNE 30, 1974

Complete this form showing your relationship during the taxable year to one or more bank, securities or other financial accounts in foreign countries. Use additional sheets if necessary.

Name(s) as shown on return: VESCO & CO., INC.

Tax identifying number (Social security number or employer identification number if other than individual): 22-1990512

Check type of return
- ☐ Individual
- ☐ Partnership
- ☒ Corporation
- ☐ Small business corporation
- ☐ Fiduciary

NOTE: Ownership of 50% or less of the stock of any corporation which owns one or more foreign accounts is not a "financial interest" in these accounts and need not be reported by the shareholder. Accounts in a U.S. military banking facility operated by a U.S. financial institution are not foreign accounts and need not be reported.

If you wish, you may also submit any other information or explanation not required by this form concerning your interest in or authority over an account.

Part I Check all appropriate boxes. See instruction F for definition of "financial interest." Use additional sheets if necessary.

1. ☐ I had signature authority or other authority over one or more foreign accounts, but I had no "financial interest" in such accounts (see instruction I). Indicate for these accounts:
   Name and tax identifying number (if any) of each owner .....
   Address of each owner .....
   (Do not complete Part II for these accounts.)

2. ☒ I had a "financial interest" in one or more foreign accounts, but the total maximum value of these accounts (see instruction H) did not exceed $10,000 at any time during the taxable year. (If you checked this box, do not complete Part II.)

3. ☐ I had a "financial interest" in 25 or more foreign accounts. (If you checked this box, do not complete Part II.)

4. ☐ I had a "financial interest" in one or more but fewer than 25 foreign accounts, and the total maximum value of these accounts (see instruction H) exceeded $10,000 during the taxable year. (If you checked this box, complete Part II.)

Part II Complete this part ONLY if you checked item 4, and provide information in items 5 through 10 for each account. Please use a separate Form 4683 for each account or use your own schedule to provide this information.

To avoid duplicate reporting on accounts owned by a corporation, partnership, or trust required to file this form, you may follow the procedure in instruction J by checking this box ☐ and completing the remainder of this part.

ANTHONY D. VESCO	25%
DAWN L. VESCO	25%
ROBERT B. VESCO	25%

P.O. BOX 8323
NASSAU N.P. BAHAMAS

PREPARED BY

DATE

APPROVED

VESCO & CO., INC.

YEAR ENDED JUNE 30, 1974

J. H. COHN & COMPANY

ANSWER TO QUESTION #(2), PAGE 3

SHAREHOLDER	PERCENTAGE OWNE.
PATRICIA J. VESCO AS CUSTODIAN FOR:	
DANIEL W. VESCO	25 %

12 Minimum tax on tax preference items (see page 6 instructions). Check here ☐ if Form 4626 is attached . . . . . NONE

13 Total tax—Add lines 8 through 12. Enter here and on line 31, page 1 . . . . . NONE

Schedule K-1 Record of Form 503 Federal Tax Deposits (List deposits in order of date made—See instr. G)

Serial number of Form 503	Date of deposit	Amount	Serial number of Form 503	Date of deposit	Amount	Serial number of Form 503	Date of deposit	Amount

	Yes	No
G Date incorporated ► JULY 12, 1972		
H (1) Did you at the end of the taxable year own, directly or indirectly, 50% or more of the voting stock of a domestic corporation?		X
(2) Did any corporation, individual, partnership, trust, or association at the end of the taxable year own, directly or indirectly, 50% or more of your voting stock? (For rules of attribution, see section 267(c).)	X	
If the answer to (1) or (2) is "Yes," attach a schedule showing: (a) name, address and identifying number; and (b) percentage owned.		
If answer to (1) above is "Yes," show taxable income or (loss) from line 30, page 1, Form 1120 of such corporation for taxable year ending with or within your taxable year		
If the answer to (2) above is "Yes," was the owner of such voting stock an alien individual or a foreign entity (corporation, partnership, trust or association)?		X
I Did you have any contracts or subcontracts subject to the Renegotiation Act of 1951?		X
If "Yes," enter the aggregate gross dollar amount billed during the year ►		
J Did you ever declare a stock dividend?		X
K Did you claim a deduction for expenses connected with:		
(1) Entertainment facility (boat, resort, ranch, etc.)?		X
(2) Living accommodations (except for employees on business)?		X
(3) Employees' families at conventions or meetings?		X
(4) Employee or family vacations not reported on Form W-2?		X

	Yes	No
L Taxable income or (loss) from line 30, page 1, Form 1120 for your taxable year beginning in: 1970 , 1971 , 1972 (5,499)		
M Refer to page 7 of instructions and state the principal: Business activity HOLDING COMPANY Product or service INVESTMENTS		
N Were you a member of a controlled group subject to the provisions of: (1) Section 1561?		X
(2) Section 1562?		X
If answer to (1) or (2) is "Yes," check the type of relationship (a) parent-subsidiary ☐ (b) brother-sister ☐ (c) combination of (a) and (b) ☐ (See section 1563.)		
If answer to (2) is "Yes," does section 1562(b)(1)(A) apply (non-application of 6% additional tax under section 1562)?		
O Did the corporation, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country?	X	
If "Yes," attach Form 4683. (For definitions, see Form 4683.)		
P Were you a U.S. shareholder of any controlled foreign corporation? (See sections 951 and 957.)		X
If "Yes," attach Form 3646 for each such corporation		
Q During this taxable year, did you pay dividends (other than stock dividends and distributions in exchange for stock) in excess of your current and accumulated earnings and profits? (See sections 301 and 316.)		X
If "Yes," file Schedule A, Form 1096. If this is a consolidated return, answer here for parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.		
R Did you file all required Forms 1087, 1096 and 1099?	N/A	

Form 1120 (1973) **Schedule C** **Special Deductions**

1 (a) 85% of line 1, Schedule C	
(b) 60.208% of line 2, Schedule C	
(c) 85% of line 3, Schedule C	
(d) 100% of line 4, Schedule C	
2 Total—See page 6 of instructions for limitation	
3 100% of line 8, Schedule C	
4 Enter dividends received deduction allowed for dividends reported on line 9, Schedule C. See section 1564(b) for computation	
5 Dividends paid on certain preferred stock of public utilities (see instructions)	
6 Western Hemisphere trade corporations (see instructions)	
7 Total special deductions—Add lines 2 through 6. Enter here and on line 29(b), page 1	

Schedule J **Tax Computation**

1 Taxable income (line 30, page 1)	LOSS	(1951)
2 Surtax exemption—Enter line 1 or $25,000, whichever is lesser. (Component members of a controlled group—see page 6 of instructions and enter your surtax exemption or line 1, whichever is lesser.)		
3 Line 1 less line 2		
4 (a) 22% of line 1		
(b) 26% of line 3		
(c) If multiple surtax exemption is elected under section 1562, enter 6% of line 2		
5 Income tax (sum of line 4, or alternative tax from separate Schedule D, whichever is lesser)		
6 (a) Foreign tax credit (attach Form 1118)		
(b) Investment credit (attach Form 3468)		
(c) Work Incentive (WIN) credit (attach Form 4874)		
7 Total of lines 6(a), (b), and (c)		
8 Line 5 less line 7		
9 Personal holding company tax (attach Schedule PH (Form 1120))		
10 Tax from recomputing a prior year investment credit (attach Form 4255)		
11 Tax from recomputing a prior year work incentive (WIN) credit (see instructions—attach computation)		
12 Total tax—Add lines 8 through 11. Check here ☐ if Form 4626 is attached		

20 Other liabilities (attach schedule)				
21 Capital stock: (a) Preferred stock	2,513,000		2,513,000	
(b) Common stock	145,665	2,658,665	145,665	2,658,665
22 Paid-in or capital surplus (attach reconciliation)		12,000		12,000
23 Retained earnings—Appropriated (attach sch.)				
24 Retained earnings—Unappropriated		2,501		550
25 Less cost of treasury stock		( )		( )
26 Total liabilities and stockholders' equity		2,673,166		2,671,215

Schedule M-1 Reconciliation of Income Per Books With Income Per Return

1 Net income per books	(1,951)	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		(a) Tax-exempt interest $	
3 Excess of capital losses over capital gains			
4 Taxable income not recorded on books this year (itemize)		8 Deductions in this tax return not charged against book income this year (itemize)	
		(a) Depreciation $	
5 Expenses recorded on books this year not deducted in this return (itemize)		(b) Depletion $	
(a) Depreciation $			
(b) Depletion $		9 Total of lines 7 and 8	
6 Total of lines 1 through 5	(1,951)	10 Income (line 28, page 1)—line 6 less 9	(1,951)

Schedule M-2 Analysis of Unappropriated Retained Earnings Per Books (line 24 above)

1 Balance at beginning of year	2,501	5 Distributions: (a) Cash	
2 Net income per books	(1,951)	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Other decreases (itemize)	
4 Total of lines 1, 2, and 3	550	7 Total of lines 5 and 6	
		8 Balance at end of year (line 4 less 7)	550

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Form 1120 (1973) Page 4

Schedule L Balance Sheets	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
ASSETS				
1 Cash		10981		10790
2 Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3 Inventories				
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)				
6 Loans to stockholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule) ICC STOCK		2,658,665		2,658,665
9 Buildings and other fixed depreciable assets	5280		5280	
(a) Less accumulated depreciation	1760	3,520	3520	1760
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)				
12 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
13 Other assets (attach schedule)				
14 Total assets		2,673,166		2,671,215
LIABILITIES AND STOCKHOLDERS' EQUITY				
15 Accounts payable				
16 Mtges., notes, bonds payable in less than 1 yr.				
17 Other current liabilities (attach schedule)				
18 Loans from stockholders				
19 Mtges., notes, bonds payable in 1 yr. or more				

Inc. dated July 21, 1972.

Exhibit P-12

Unanimous consent of directors in lieu of the first meeting of the directors of Vesco & Co., Inc. dated July 21, 1972

approved and adopted as and for the by-laws of the corporation, and a copy thereof shall be permanently inserted in the minute book.

2. The seal of this corporation shall be circular in form, have the words "VESCO & CO., INC." and the words and figures "Incorporated Delaware, 1972" in the center thereof, and an impression of the seal shall be made on the margin of the page of the corporation's minute book on which this resolution shall appear.

3. The form of stock certificate presented to each director be and the same hereby is adopted as the stock certificate of this corporation and a specimen of such certificate shall be kept in the minute book.

4. The following persons be and they hereby are elected to the offices set opposite their respective names, to hold office for one year and until their successors

UNANIMOUS CONSENT OF DIRECTORS

IN LIEU OF THE

FIRST MEETING OF THE DIRECTORS OF

VESCO & CO., INC.

* * * * * * * * *

The undersigned, being all of the directors of VESCO & CO., INC., a corporation of the State of Delaware, do hereby take the following action in connection with the organization of said corporation, which action is hereby deemed to be effective as of the date hereof:

1. The by-laws prepared for the corporation by counsel be and they hereby are

of stock of International Controls Corp. set opposite their respective names be and hereby are accepted:

Name of Offeror	No. of Shares International Controls Corp. being transferred	Shares of Class A Voting Common Stock of Vesco & Co., Inc. to be Received	Shares of Class B Non-Voting Common Stock of Vesco & Co., Inc. to be Received	Shares of Preferred Stock of Vesco & Co., Inc. to be Received
Robert L. Vesco	350,088	52	--	1,838
Robert L. Vesco as Custodian for Daniel Vesco	5,073	12	3,000	--
Robert L. Vesco as Custodian for Anthony D. Vesco	5,073	12	3,000	--

are elected and qualify:

OFFICE	NAME
President	- ROBERT L. VESCO
Treasurer	- SHIRLEY BAILEY
Secretary	- SHIRLEY BAILEY

5. The officers of this corporation be and they hereby are authorized and directed to take all necessary steps and do all things and execute any and all writings required or advisable to implement the business of the corporation, including but not limited to the hiring of employees, the opening of bank accounts, the execution and delivery of corporate resolutions on forms prepared by banks, and the hiring of accountants, attorneys and other advisors and consultants.

6. The offers of the following persons to purchase the number and class of shares of capital stock of this corporation set opposite their respective names in exchange for that number of shares

tions in their capacity as directors of VESCO & CO., INC.

ROBERT L. VESCO

RICHARD CLAY

SHIRLEY BAILEY

Robert L. Vesco as Custodian for Dawn L. Vesco	5,073	12	3,000	--
Robert L. Vesco as Custodian for Robert B. Vesco	5,073	12	3,000	--

7. The President and Secretary of this corporation be and they hereby are authorized and directed to execute, issue and deliver in the name of and on behalf of this corporation and under its corporate seal, certificates for that number of shares of stock of this corporation set opposite the names of the offerors listed above.

The undersigned, by affixing their respective signatures hereto this 21st day of July, 1972, do hereby consent to, authorize and approve the foregoing resolu-

Inc. dated December 29, 1972.

(1165a - 1167a)

Exhibit P-13

Unanimous consent of directors in lieu of special meeting of the directors of Vesco & Co., Inc. dated December 29, 1972

persons to purchase the number and class of shares of capital stock of this corporation set opposite their respective names in exchange for that number of shares of stock of International Controls Corp. set opposite their respective names be and hereby are accepted:

Name of Offerer	No. of Shares International Controls Corp. being transferred	Shares of Class B Non-Voting Common Stock of Vesco & Co., Inc. to be received	Shares of Preferred Stock of Vesco & Co., Inc. to be received
Robert L. Vesco	449,912	----	675
Robert L. Vesco as Custodian for Daniel Vesco	6,522	2,000	---
Robert L. Vesco as Custodian for Anthony D. Vesco	6,522	2,000	---
Robert L. Vesco as Custodian for Daun L. Vesco	6,522	2,000	---
Robert L. Vesco as Custodian for Robert B. Vesco	6,522	2,000	---

UNANIMOUS CONSENT OF DIRECTORS

IN LIEU OF A SPECIAL MEETING

OF THE DIRECTORS OF

VESCO & CO., INC.

* * * * * * *

The undersigned being all the directors of VESCO & CO., INC., a corporation of the State of Delaware, do hereby take the following action, which action is hereby deemed to be effective as of the date hereof:

1. The offers of the following persons to purchase the number and

Patricia J. Vesco.
PATRICIA J. VESCO

Richard E. Clay
RICHARD E. CLAY

S. E. B.
SHIRLEY E. BAILEY

2. The President and Secretary of this corporation be and they hereby are authorized and directed to execute, issue and deliver in the name of and on behalf of this corporation and under its corporate seal, certificates for that number of shares of stock of this corporation set opposite the names of the offerers listed above.

The undersigned, by affixing their respective signatures hereto this 29th day of December, 1972, do hereby consent to, authorize and approve the foregoing resolutions in their capacity as directors of VESCO & CO., INC.

of 6 pages.

(1168a - 1174a)

Exhibit P-14

Minutes of special meeting of the directors of Vesco & Co., Inc. on February 11, 1973 consisting of 6 pages

Company.

Said meeting was convened pursuant to telephonic notice, and no waiver of notice thereof is required pursuant to Section 229 of the General Corporation Law of Delaware.

The first order of business was the discussion of a proposed agreement between the corporation and Elmer Sticco or Norton Mailman. Ralph M. Lowenbach, counsel for the corporation telephoned, and each of the directors simultaneously entered into the telephone conversation, in which Mr. Lowenbach explained the terms of the proposed transaction which he had been negotiating. He advised the Board that Mr. Mailman had been almost impossible to reach, and because of the impending application for receivership of International Controls Corp. ("I.C.C."), the granting of which would have a substantially detrimental effect on Vesco & Co., Inc. and its shareholders, it was deemed necessary to have

MINUTES OF A SPECIAL MEETING OF

THE BOARD OF DIRECTORS OF

VESCO & CO., INC.

* * *

A special meeting of the Board of Directors of Vesco & Co., Inc., a Delaware corporation, was held at the home of Patricia J. Vesco, Old Denville Road, Boonton, New Jersey, at 8:00 P.M. on Sunday, February 11, 1973.

Present in person were Patricia J. Vesco, Shirley Bailey and Richard Clay, being all of the directors of the

holders' derivative suits involving I.C.C.

3. Mr. Sticco would have an option to purchase 400,000 of the corporation's I.C.C. common stock at a price of $5.50 per share, unless the corporation decided to accept a lower offer, in which case Sticco had the right of first refusal at the lower price. Sticco also had the right of first refusal on whatever terms the Company would agree to with a bona fide third party with respect to the remaining I.C.C. shares held by the Company.

The Mailman transaction was different because Mr. Mailman was not agreeing to pay any consideration for his option or right of first refusal, but would receive $50,000 per year from the Company in consideration for his services as consultant to the Company with respect to its holdings of I.C.C. common stock. In all other respects, the purchase agreements were

a completed agreement by the return date of such application, Tuesday, February 13, 1973. Mr. Sticco and his counsel indicated a willingness to enter into an agreement which would be replaced by an agreement with Norton Mailman, if terms were agreed upon with Norton Mailman prior to February 23, 1973.

The terms of the agreement with Sticco were generally as follows:

1. Mr. Sticco would pay to the corporation $10,000, in two $5,000 payments on July 1, 1973 and July 1, 1974.

2. Mr. Sticco would have the right to vote the shares of stock of the Company at all elections for directors until December 31, 1974. Such vote could be cast only for persons who were not defendants in the current SEC litigation, or any share-

Norton Mailman on or before February 23, 1973, and upon execution of said agreement with Norton Mailman, the said agreement with Elmer Sticco would become null and void; and it is further

RESOLVED that the officers of this corporation be and they hereby are authorized for and on behalf of this corporation to execute and deliver said agreements with Elmer Sticco and Norton Mailman and a letter agreement signifying the agreement of this corporation to enter therein, in such form and containing such provisions as shall be deemed appropriate to said officers as evidenced by their execution thereof.

The next order of business was the consideration by the Directors of a loan of $10,000 to be made to this Corporation by Patricia J. Vesco. After discussion, the following resolution was adopted, two directors in favor, Patricia J. Vesco abstaining:

RESOLVED that this Corporation shall borrow from Patricia J. Vesco the sum of $10,000, with interest thereon payable at the rate of 6% per annum, said sum to be repayable upon demand; and it is further

substantially identical. Shares sold to a bona fide purchaser because the right of first refusal was not exercised would be sold free of any option rights or further rights of first refusal, but the voting rights would remain with Sticco or Mailman until December 31, 1974.

The Board of Directors discussed the proposal, and thereafter, upon motion duly made, seconded and unanimously carried, it was

> RESOLVED that this corporation shall enter into an agreement with Elmer Sticco on the terms and conditions outlined to the Board of Directors by counsel, containing such provisions in said agreement as shall be deemed appropriate by the officers of this corporation as evidenced by their execution thereof; provided, however, that said agreement shall be made subject to the execution of an agreement of similar import with

RESOLVED that the officers of this Corporation be and they hereby are authorized and directed to execute and deliver for and on behalf of this Corporation the appropriate form of checking resolution as provided by the said National Newark & Essex Bank, the terms of which are hereby incorporated herein by reference; and it is further

RESOLVED that this Corporation shall open a checking account with the Bahamas Commonwealth Bank, Nassau, Bahamas, on which checks may be signed by either the President, the Secretary or Richard Clay; and it is further

RESOLVED that the officers of this Corporation be and they hereby are authorized and directed to execute and deliver for and on behalf of this Corporation the appropriate form of checking resolution as provided by the said Bahamas Commonwealth Bank, the terms of which are hereby incorporated herein by reference.

The directors then considered a proposal whereby the Corporation would guarantee a loan of $1,000,000 about to be made to Robert L. Vesco by Trident Bank Limited, Nassau, Bahamas. In

RESOLVED that the officers of this Corporation be and they hereby are authorized and directed for and on behalf of this Corporation to execute and deliver a promissory note in such form as shall be acceptable to said officers, as evidenced by their execution thereof, in the principal sum of $10,000, bearing interest at 6% per annum, evidencing this corporation's obligation to Patricia J. Vesco as aforesaid.

The next order of business was the consideration of the establishing of checking accounts for the Corporation. After discussion, upon motion duly made, seconded and unanimously carried, the following resolutions were adopted:

RESOLVED that this Corporation shall open a checking account with the National Newark & Essex Bank, Newark, New Jersey, on which checks may be signed by either the President or the Secretary of the Corporation; and it is further

greater discount over the prices at which potential purchasers have been discussing the acquisition of the entire common stock of the Company with representatives of the Company. Those discussions have been at $3.00 to $4.00 a share, and for this reason the option at $1,400,000 seemed to be in the best interest of the Corporation, in the judgment of the directors. It was an opportunity to vest in the holders of the common shares a substantially greater share of the equity in the corporation's assets. After further discussion, upon motion duly made, seconded and unanimously carried, it was:

> RESOLVED that this Corporation shall unconditionally guarantee the obligation about to be incurred by Robert L. Vesco in the principal sum of $1,000,000, with interest at 7 1/2% payable 12 months from the date of the loan, to the Trident Bank Limited, Nassau, Bahamas, and to secure said

consideration for the Corporation's guarantee, which is proposed to secure by a pledge to said Trident Bank Limited of this Corporation's entire holdings of common stock of International Controls Corp., Robert L. Vesco proposed to grant to this Corporation an option to purchase all of his preferred stock in the Corporation for the sum of $1,400,000. The directors considered the fact that the preferred stock held by Robert L. Vesco had a preferential value on liquidation of $2,500,000. Also discussed was the fact that the current market price of the common stock was about $2.00 per share, with the result that all of the equity of the Corporation presently was in the preferred shares. The option price represented a substantial discount over the market value of the stock based upon present trading values, and an even

There being no further business to come before the meeting, it was, on motion, adjourned.

Shirley E. Bailey

SHIRLEY E. BAILEY

guarantee by a pledge to said Trident Bank Limited, Nassau, Bahamas, of all of this Corporation's 846,000 shares of the common stock of International Controls Corp., in consideration for which this corporation shall receive an option to purchase from Robert L. Vesco all of the shares of preferred stock of this corporation held by Robert L. Vesco, which option shall terminate 30 days after the date on which said loan shall be repaid in full; and it is further

RESOLVED that the officers of this corporation be and they hereby are authorized and directed for and on behalf of this corporation to take any and all action required to effect the foregoing resolution, including, but not limited to, the execution and delivery of this corporation's guarantee and pledge of the shares held by this corporation of International Controls Corp. and the acceptance of the option referred to in the foregoing resolution, all in such form as shall be satisfactory to said officers as evidenced by their execution, delivery and acceptance thereof.

(1175a - 1178a)

Exhibit P-14a

Minutes of special meeting of the directors of Vesco & Co., Inc. on February 11, 1973 consisting of 3 pages.

notice, and no waiver of notice thereof is required pursuant to Section 229 of the General Corporation Law of Delaware.

The first order of business was the discussion of a proposed agreement between the corporation and Elmer Sticco or Norton Mailman. Ralph M. Lowenbach, counsel for the corporation telephoned, and each of the directors simultaneously entered into the telephone conversation, in which Mr. Lowenbach explained the terms of the proposed transaction which he had been negotiating. He advised the Board that Mr. Mailman had been almost impossible to reach, and because of the impending application for receivership of International Controls Corp. ("I.C.C."), the granting of which would have a substantially detrimental effect on Vesco & Co., Inc. and its shareholders, it was deemed necessary to have a completed agreement by the return date of such

MINUTES OF A SPECIAL MEETING OF

THE BOARD OF DIRECTORS OF

VESCO & CO., INC.

* * *

A special meeting of the Board of Directors of Vesco & Co., Inc., a Delaware corporation, was held at the home of Robert Vesco, Old Denville Road, Boonton, New Jersey, at 8:00 P.M. on Sunday, February 11, 1973.

Present in person were Patricia J. Vesco, Shirley Bailey and Richard Clay, being all of the directors of the Company.

Said meeting was convened pursuant to telephonic

3. Mr. Sticco would have an option to purchase 400,000 of the corporation's I.C.C. common stock at a price of $5.50 per share, unless the corporation decided to accept a lower offer, in which case Sticco had the right of first refusal at the lower price. Sticco also had the right of first refusal on whatever terms the Company would agree to with a bona fide third party with respect to the remaining I.C.C. shares held by the Company.

The Mailman transaction was different because Mr. Mailman was not agreeing to pay any consideration for his option or right of first refusal, but would receive $50,000 per year from the Company in consideration for his services as consultant to the Company with respect to its holdings of I.C.C. common stock. In all other respects, the purchase agreements were substantially identical. Shares sold to a bona fide purchaser

application, Tuesday, February 13, 1973. Mr. Sticco and his counsel indicated a willingness to enter into an agreement which would be replaced by an agreement with Norton Mailman, if terms were agreed upon with Norton Mailman prior to February 23, 1973.

The terms of the agreement with Sticco were generally as follows:

1. Mr. Sticco would pay to the corporation $10,000, in two $5,000 payments on July 1, 1973 and July 1, 1974.

2. Mr. Sticco would have the right to vote the shares of stock of the Company at all elections for directors until December 31, 1974. Such vote could be cast only for persons who were not defendants in the current SEC litigation, or any shareholders' derivative suits involving I.C.C.

Mailman, the said agreement with Elmer Sticco would become null and void; and it is further

RESOLVED that the officers of this corporation be and they hereby are authorized for and on behalf of this corporation to execute and deliver said agreements with Elmer Sticco and Norton Mailman and a letter agreement signifying the agreement of this corporation to enter therein, in such form and containing such provisions as shall be deemed appropriate to said officers as evidenced by their execution thereof.

Shirley E Bailey

SHIRLEY BAILEY, Secretary

because the right of first refusal was not exercised would be sold free of any option rights or further rights of first refusal, but the voting rights would remain with Sticco or Mailman until December 31, 1974.

The Board of Directors discussed the proposal, and thereafter, upon motion duly made, seconded and unanimously carried, it was

> RESOLVED that this corporation shall enter into an agreement with Elmer Sticco on the terms and conditions outlined to the Board of Directors by counsel,containing such provisions in said agreement as shall be deemed appropriate by the officers of this corporation as evidenced by their execution thereof; provided, however, that said agreement shall be made subject to the execution of an agreement of similar import with Norton Mailman on or before February 23, 1973, and upon execution of said agreement with Norton

(1179a - 1181a)

Exhibit P-15

Letter dated February 12, 1973 to Robert L. Vesco from Trident Bank Limited.

b) You shall pledge all the shares of preferred stock of Vesco & Co., Inc., as collateral for the loan together with 120,000 shares of International Controls Corp. common stock.

c) You shall cause Vesco & Co., Inc., to guarantee the loan and hypothecate its shares in the International Controls Corp. as collateral for the guarantee in accordance with a Hypothecation Agreement, substantially in the form annexed hereto as Appendix B.

d) You shall sign a loan agreement substantially in the form annexed as Appendix A.

e) Would you kindly acknowledge acceptance of this letter of commitment by signing the attached copy of this letter and returning it to me.

Yours very truly,

TRIDENT BANK LIMITED

/s/
President

February 12, 1973

Mr. Robert L. Vesco
P.O. Box N 8323
Nassau, Bahamas
Dear Mr. Vesco:

In connection with our discussion, we are pleased to confirm that we are prepared to lend to you the sum of $1,000,-000 (one million dollars) which is being used in connection with the matters that may arise out of certain litigation related to yourself personally, and/or other entities and corporations in which you may have an interest on the following terms and conditions:

1. a) The loan of one million dollars will be payable one year from date of closing and you will sign a Promissory Note, substantially in the form annexed as Appendix C hereto. The rate of interest will be 7% per annum, payable at the time the Note is due.

Mr. Robert L. Vesco February 12, 1973

Robert L. Vesco

Robert L. Vesco

AGREED:

Patricia J. Vesco Pres.

Vesco & Co. Inc.

(1182a - 1183a)

Exhibit P-16

Note in the amount of $1,000,000 dated February 15, 1973 signed by Robert L. Vesco.

MATURITY.

DATED THE ..15th.. DAY OF ..February.....A.D., 1973

P.O. Box N 8323
Nassau, Bahamas

.....

APPENDIX B

NASSAU, BAHAMAS U.S.$1,000,000.00

12 MONTHS FROM THIS DATE ROBERT L. VESCO, THE UNDERSIGNED, HEREBY PROMISES TO PAY TO TRIDENT BANK LIMITED FOR VALUABLE CONSIDERATION RECEIVED THE SUM OF U.S.$1,000,000.00 (UNITED STATED ONE MILLION DOLLARS) AT THE REGISTERED OFFICE OF TRIDENT BANK LIMITED IN THE CITY OF NASSAU IN THE ISLAND OF NEW PROVIDENCE ONE OF THE BAHAMA ISLANDS, TOGETHER WITH INTEREST AT 7% PER ANNUM, BOTH BEFORE AND AFTER MATURITY

Social Security #386-32-9035, (hereinafter referred to as "Mr. Vesco") is chairman of the board of directors of International Controls Corp. (hereinafter referred to as "ICC") a publicly held corporation listed on the American Stock Exchange.

Daniel William Vesco, Dawn Lee Vesco, Robert Bruce Vesco and Anthony Donald Vesco (hereinafter collectively referred to as "the children") are all minor children of Mr. Vesco and reside at the same address.

February 29, 1972

Commissioner of Internal Revenue
Washington, D.C. 20224
Attention: T:I:R

Re: Robert L. Vesco, Daniel William Vesco,
Dawn Lee Vesco, Robert Bruce Vesco
and Anthony Donald Vesco

Dear Sir:

A ruling is respectfully requested that a proposed transfer of property by five individuals to a newly-formed corporation will constitute an exchange in which no gain or loss is recognized to the transferors pursuant to section 351 of the Internal Revenue Code.

FACTS

Mr. Robert L. Vesco of Boonton Township, New Jersey,

ICC free and clear of any encumbrance. If at any time Vesco & Co. Inc. disposes of its shares of ICC or you dispose of all of the preferred shares of Vesco & Co. Inc. the Note shall become immediately due and payable.

4. You, Vesco & Co. Associates represent and warrant to the lender that:

(a) the corporation is duly organised and existing in good standing under the laws of Delaware and has the corporate power to perform its obligations under this agreement.

(b) Neither the execution and delivery of this agreement nor the fulfillment of the compliance with the terms and provisions hereof by the borrower will conflict or result in any violation of the Vesco & Co. charter and by-laws.

(c) Vesco & Co. has good and marketable title to the ICC shares and has the right to hypothecate these in accordance with the hypothecated agreement annexed hereto and has delivered the hypothecation agreement as well as such corporate resolutions as are necessary to satisfy the lender.

1185a

LOAN AGREEMENT

Dated February 15, 1973

Between

TRIDENT BANK LIMITED

and

ROBERT L. VESCO

1. Trident Bank hereby agrees to loan the sum of One Million Dollars ($1,000,000) for one year bearing interest at 7%, interest payable at the time the Note is due. The Note is annexed hereto as Appendix C.

2. As security for the loan you hereby pledge all the preferred shares of Vesco & Co. Inc. and will cause Vesco & Co. Inc. to hypothecate all the shares of Internationa Controls Corp. in accordance with Appendix B. In addition you hereby pledge 120,000 shares of ICC beneficially owned by you.

3. You hereby represent and warrant that you own all the preferred shares of Vesco & Co. Inc. and that Vesco & Co. Inc. represents that it owns shares of

(b) neither the execution and delivery of this Agreement and the loan hereunder will conflict with the lenders Charter or By-Laws.

(c) the lender acknowledges that the borrower, whether by way of individual or otherwise has made no representations whether affirmative or negative with respect to the financial or other conditions of Vesco & Co. Inc. or ICC.

(d) this agreement is a binding obligation upon yourself, and Vesco & Co. Inc. and the guarantees and hypothecation agreement have been duly authorized.

6. Covenants of Borrower

So long as the notes remain unpaid the borrower covenants that

(a) Preservation and Inspection: Borrower will do or cause to be done all things necessary to preserve, extend and keep in full force and effect the corporate existence of Vesco & Co. Inc. and all of the rights and franchises reasonably necessary to the conduct of its business.

(d) when issued in accordance with this Agreement the Note will be a binding obligation of the borrower and will be in accordance with the terms and conditions of this Agreement.

(e) all of the preferred shares of Vesco & Co. Inc. are owned by Robert L. Vesco as at the date of closing.

(f) all of the common shares of ICC are owned by Vesco & Co. Inc. and as at the date of closing free and clear of any incumbrances.

(g) Vesco & Co. Inc. has filed all tax and other returns which are required to be filed (including but not limited to income, franchise, exercise, sales property and transfer taxes for all past years).

5. The lender represents and warrants that:

(a) it is a bank incorporated under the laws of the Bahamas duly organised and existing in good standing under the laws of the Bahamas and has the power to make such a loan as is contemplated under this Agreement.

8. Repayment

Lender will have the right of prepayment of the loan on thirty (30) days' notice without penalty or interest thereafter.

9. Events of Default

If any of the following events shall occur and continue for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about by operation of law or otherwise), for a period of twenty (20) days, lender may at its option by written notice to borrow, declare the Notes to be forthwith due and payable, and the Notes shall thereupon be and become due and payable upon the tenth day following the day of such written notice in the aggregate principal amount thereof together with interest accrued thereon:

(a) The preferred shares of Vesco & Co. Inc. shall cease to be owned by Robert L. Vesco, except that if such event of default occurs, the Purchase Notes shall be due and payable not later than thirty (30) days after the day of such written notice from Lender to Borrower.

(b) Dividend Limitations: Without the prior written consent of lender, Vesco & Co. Inc. will not declare or pay any dividends on any class of its stock, liquidate in whole or in part or make any other distribution on account of any class of its stock, or redeem, purchase or otherwise acquire directly or indirectly through a subsidiary or otherwise any shares of its stock.

(c) Merger and Sale of Assets: Without the prior written consent of lender, Vesco & Co. Inc. will not sell, transfer, pledge, mortgage or otherwise encumber or dispose of all or any of the ICC shares.

(d) Sale of Stock or Notes: Without the prior written consent of the lender, Robert L. Vesco or Vesco & Co. Inc. will not sell, transfer, pledge, mortgage or otherwise encumber or dispose of all or any of the ICC shares.

7. Survival of Representations and Warranties

All representations and warranties contained herein shall survive so long as the Notes shall remain unpaid in whole or in parts.

cates its approval thereof, consent thereto or acquiescence therein, or in order, judgement or decree is entered appointing any such trustee or receiver, or adjudicating borrower bankrupt or insolvent, or approving the petition in any such proceedings, and any such order, judgement or decree remains unstayed and in effect more than sixty (60) days.

10. Currency of Payments

Any payments required by or made under the terms of this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and all references herein to amounts stated in dollars referred to United States dollars.

11. Closing

The closing under this Agreement shall be held in Nassau, the Bahama Islands, within thirty (30) days of this date, or at such place and on such day and time as may be

(b) Any representation or warranty made by borrower herein or in any writing furnished by any officer or borrower pursuant to this Agreement shall be false in any material respect.

(c) Borrower makes default in the performance or observance of any agreement, covenant, term or condition contained in this Agreement or in the Notes.

(d) Borrower makes an assignment for the benefit of creditors or admits its inability to pay its debts generally as they become due.

(e) Borrower or guarantor petitions or applies to any tribunal for the appointment of a trustee or receiver of Vesco & Co. Inc., or of any material part of the assets of borrower or commences any proceedings (other than proceedings for the voluntary liquidation of a wholly-owned subsidiary) relating to borrow under any bankruptcy, reorganisation arrangement, insolvency, readjustment of debt, dissolution or liquidation, law of a jurisdiction, whether now or hereafter in effect- or if any such petition or application is filed, or any such proceedings are commenced against borrower or borrower by any act indi-

14. Governing Law

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by the law of the Bahamas (not including the choice of law rules thereof).

15. Severability

In the event that one or more of the provisions of this Agreement or of the Note shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained therein or herein shall not in any way be affected or impaired thereby.

16. Descriptive Headings

The descriptive headings of the several paragraphs of this Agreement are inserted for convenience only and do not constitute a part of the Agreement.

17. Counterparts

This Agreement may be executed simultaneously in no more

11. contd

mutually agreed upon by the parties. At the Closing, Borrower shall deliver to Lender:

(a) the Notes, duly executed as provided in paragraph 1. above;

(b) certificates evidencing the Vesco. & Co. Inc. shares;

(c) the hypothecation agreement as set forth in paragraph 2 above.

12. Successors or Assigns

Except as otherwise provided herein, all covenants and agreements in this Agreement by or on behalf of either of the parties hereto shall bind and inure to the benefits of the respective successors and assigns of the parties hereto.

13. Modification

This Agreement constitutes the entire Agreement of the parties with respect to the matters provided for herein, and no modification or amendment of this Agreement shall be binding upon the party affected unless in writing and executed by each party affected.

TRIDENT BANK LIMITED

By _____
Norman P. LeBlanc

By _____
Robert L. Vesco

By _____
Vesco & Co. Inc.

17. contd

than ten (10) counterparts, none of which need contain the signatures of both parties hereto and each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

18. Notices

All communications provided for hereunder shall be sent first class airmail, and if to the lender, shall be addressed as follows:

Trident Bank Limited
P.O. Box 4815
Nassau, Bahamas

Attn: Mr. Norman P. LeBlanc, President

and if to the borrower, shall be addressed as follows:

Robert L. Vesco
P.O. Box N8323
Nassau, Bahamas

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first hereinabove set forth:

Exhibit P-18

Hypothecation agreement dated February 15, 1973.

(1191a - 1193a)

Trident and Vesco. Acceptable escrow agents for this purposeinclude Bahamas Commonwealth Bank Limited, The Royal Bank of Canada and Columbus Trust Limited.

(c) Trident remedies in the event of default under this agreement shall include the power of private (as well as public) sale of any or all of its pledged shares, subject to the obligation of Trident to return to Vesco or Vesco & Co. Inc. any proceeds of any sale of the shares in excess of the indebtedness of Vesco to Trident, and subject to a right in favor of Vesco or his nominees to match any sale price at the private sale and to purchase the shares at such price, or, (if the fair value of the shares is not in excess of the indebtedness at the time of default) the power to retain the shares in satisfaction of Trident's indebtedness.

2. The parties will use their best efforts to execute all documents approved by counsel, respectively, for Vesco and Trident which the parties reasonably deem appropriate to accomplish the purposes of this Agreement.

APPENDIX A

HYPOTHECATION AGREEMENT

This is an agreement between Trident Bank Limited, a Company limited by shares organised under the laws of the Bahamas, Robert L. Vesco and Vesco & Co. Inc.

Trident and Vesco agree as follows:

1. (a) The shares of Vesco & Co. Inc. and ICC shares, which are security for Trident's loan to Vesco shall at our direction or request be transferred off record into a nominee's name mutually acceptable to both parties as mortgagee "representing" Trident as mortgagor, provided that the same description shall be entered on the books of ICC, all in accordance with articles and laws acceptable to ICC.

   (b) The shares shall be deposited with an escrow agent in the Bahamas pursuant to an escrow agreement ("Escrow Agreement") prepared by and acceptable to counsel, respectively, for

By.....

VESCO & CO. INC.

By.....

DATED this ~~12th~~ 15th day of February, 1973

3. The Lender acknowledges that under this Agreement it does not have the right to vote the shares of Vesco & Co. Inc., or International Controls Corp. so long as the loan is not default and recognises that the borrower has the absolute right to vote the shares of Vesco & Co. Inc., and the absolute right to vote the shares of International Controls Corp. notwithstanding the provisions of the loan agreement or the hypothecation agreement, except to the extent that nothing in this provision would negate the lender's interest in the collateral nor would prejudice the lender's rights in any manner under the terms of the loan agreement or this Agreement of Hypothecation.

TRIDENT BANK LIMITED

By.....

ROBERT L. VESCO

Exhibit P-19

Option with respect to 2,500 shares of Vesco & Co., Inc. preferred stock signed by Robert L. Vesco.

Limited to the undersigned pursuant to a Loan Agreement dated February 19, 1973.

This option is given by the undersigned to Vesco & Co., Inc. in consideration for its guaranty of the aforesaid loan and its hypothecation of 846,000 shares of International Controls Corp. common stocks to secure the aforesaid loan by Trident Bank Limited to the undersigned.

ROBERT L. VESCO

O P T I O N

The undersigned grants to Vesco & Co., Inc. an option to purchase 2,500 shares of his preferred stock in Vesco & Co., Inc. for a price of $1,400,000. This option may be exercised by Vesco & Co., Inc. until the expiration of the period ending 30 days beyond the repayment in full by the undersigned to Trident Bank Limited of a loan extended by Trident Bank

(1196a - 1198a)

Exhibit P-20

Letter dated July 21, 1972 from Robert L. Vesco to American National Bank & Trust Company.

Robert L. Vesco	CU5270	100,000		
Robert L. Vesco	CU5272	100,000		
Robert L. Vesco	CU5271	100,000		
Robert L. Vesco	CU5278	50,000		
	Total	350,100	350,088	12
Robert L. Vesco Custodian for Daniel W. Vesco	CU5119	11,595	5,073	6,522
Robert L. Vesco Custodian for Anthony D. Vesco	CU5120	11,595	5,073	6,522
Robert L. Vesco Custodian for Dawn Lee Vesco	CU5121	11,595	5,073	6,522
Robert L. Vesco Custodian for Robert B. Vesco	CU5118	11,595	5,073	6,522

Fairfield, New Jersey 07006
Telephone: (201) 227-4600
TWX: 710-734-4340

1197a

July 21, 1972

American National Bank & Trust
225 South Street
Morristown, New Jersey 07960

Gentlemen:

I am enclosing herewith certificates representing the following shares along with properly endorsed stock powers. Please effect transfer of the number of shares indicated to the name of Vesco & Co., Inc. and return the balance in the original name:

Name of Transferor	Cert. Nos.	No. of Shares Delivered	No of Shares To Be Transferred to Vesco & Co., Inc.	No of Shares To Be Returned To Original Name
Robert L. Vesco	C75085	100		
	CU5270	100,000		

American National Bank & Trust
225 South Street
Morristown, New Jersey 07960

July 21, 1972

This letter is being hand delivered and I would appreciate it if you would be kind enough to hand to the messenger all of the stock certificates, after transfer, pursuant to the above to return to me.

Very truly yours,

INTERNATIONAL CONTROLS CORP.

Robert L. Vesco
Chairman and Chief Executive Officer

RLV:seb

Encls:

(1199a - 1202a)

Exhibit P-21a

Copy of Vesco & Co., Inc.'s certificate B 1
with stub.

No. B 1

INCORPORATED UNDE

THE STATE OF

VESCO &

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B
NO PAR VALUE,

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON R
OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHT
TO BE ISSUED.

This Certifies that ROBERT L. VESCO as Cus
under the Uniform Gifts
three thousand (3,000)---------- Class "B" Co

Vesco & Co., Inc.

only on the books of the Corporation by
authorized Attorney upon surrender

In Witness Whereof, the said Corporation has ca
and its Corporate Seal to be hereunto affixed this 21

Shirley Bailey
SHIRLEY BAILEY SECRETARY-TREASURER

R THE LAWS OF

DELAWARE

SHARES

-3,000-

CO., INC.

3" COMMON STOCK
NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

EQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT
S AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED

stodian for Daniel Vesco
s to Minors Act _____ is the owner of

mmon Non-Voting Shares of the Capital Stock of

ully paid and non-assessable transferable
y the holder hereof in person or by duly
f this Certificate properly endorsed.

used this Certificate to be signed by its duly authorized officers
day of July A.D. 19 72

ROBERT L. VESCO PRESIDENT

1200a

For Value Received ____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto ____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

____

____

____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated ____ 19__

In presence of

____

____

CERTIF

For 3,000 Shares

Issued to

Edward L Vance as Custodian for Daniel
Vance under the Uniform Gifts to Minors Act

Dated July 21 1972

From wh

Dated

NO. ORIGINAL
CERTIFICATE

ICATE

om transferred

19

No. Original Shares	No. of Shares Transferred

Received Certificate No. _____
for _____ Shares
this ____ day of _____ 19__

Exhibit P-21b

Copy of Vesco & Co., Inc.'s certificate B 2
with stub.

(1203a - 1206a)

No. B 2

INCORPORATED UN

THE STATE

VESCO &

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS
NO PAR VALU

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPO
OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIG
TO BE ISSUED.

This Certifies that ROBERT L. VESCO as Cu
under the Uniform Gif

three thousand (3,000)---------- Class "B" C

Vesco & Co., Inc.

only on the books of the Corporation
authorized Attorney upon surrender

In Witness Whereof, the said Corporation has
and its Corporate Seal to be hereunto affixed this

Shirley Bailey

SHIRLEY BAILEY SECRETARY-TREASURER

...DER THE LAWS OF

OF DELAWARE

SHARES

3,000

CO., INC.

"B" COMMON STOCK
JE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

N REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT
GHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED

stodian for Anthony D. Vesco
ts to Minors Act is the owner of

Common Non-Voting Shares of the Capital Stock of

fully paid and non-assessable transferable
by the holder hereof in person or by duly
of this Certificate properly endorsed.

caused this Certificate to be signed by its duly authorized officers
21 days of July A.D. 1972

ROBERT L. VESCO PRESIDENT

1204a

For Value Received, ____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

ATTENTION: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFI

For 3,000 Shares

Issued to

Robert L. Verso as Custodian for
Anthony D. Verso under Uniform Gifts to Minors Act

Dated July 21 1972

From whe

Dated

NO. ORIGINAL CERTIFICATE

om transferred

19

No. Original Shares	No. of Shares Transferred

Received Certificate No.

for *Shares*

this *day of* *19*

(1207a - 1210a)

Exhibit P-21c

Copy of Vesco & Co., Inc.'s certificate B 3
with stub.

No B 3

INCORPORATED UN

THE STATE

VESCO &

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLAS
NO PAR VALU

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPO
OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RI
TO BE ISSUED.

This Certifies that ROBERT J. VESCO as Cu
under the Uniform Gi
three thousand (3,000)---------- Class "B"

Vesco & Co., inc.

only on the books of the Corporation
authorized Attorney upon surrende

In Witness Whereof, the said Corporation has
and its Corporate Seal to be hereunto affixed this

Shirley Bailey

SHIRLEY BAILEY SECRETARY TREASURER

SHARES

NDER THE LAWS OF

8,000

OF DELAWARE

CO., INC.

S "B" COMMON STOCK
UE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

ON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT
GHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED

ustodian for Dawn L. Vesco
fts to Minors Act is the owner of
Common Non-Voting Shares of the Capital Stock of
fully paid and non-assessable transferable
by the holder hereof in person or by duly
r of this Certificate properly endorsed.

caused this Certificate to be signed by its duly authorized officers
21 day of July A.D. 1972

ROBERT L. VESCO PRESIDENT

1208a

1209a

For Value Received, _____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THIS CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFIC

For 3,000 Shares

Issued to

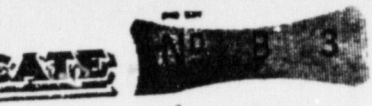
Robert L. Verso as Custodian for Dawn L. Verso under Uniform Gift to Minors Act

Dated July 21 1972

From whom

Dated

NO. ORIGINAL CERTIFICATE	N



n transferred

19

No. Original Shares	No. of Shares Transferred

Received Certificate No. _____
for _____ Shares
this ____ day of ____ 19__

(1211a - 1214a)

Exhibit P-21d

Copy of Vesco & Co., Inc.'s certificate B 4
with stub.

No. B-4

INCORPORATED

THE STA

VESCO

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CL
NO PAR VA

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER U
OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE
TO BE ISSUED.

This Certifies that ROBERT L. VESCO as
under the Uniform G
three thousand (3,000)---------- Class "B"

Vesco & Co., Inc.

only on the books of the Corporation
authorized Attorney upon surrena

In Witness Whereof, the said Corporation ha
and its Corporate Seal to be hereunto affixed this

Shirley Bailey
SHIRLEY BAILEY SECRETARY-TREASURER

UNDER THE LAWS OF

SHARES

ATE OF DELAWARE

& CO., INC.

ASS "B" COMMON STOCK
ALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

PON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT
RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED

Custodian for Robert B. Vesco
ifts to Minors Act _____ is the owner of
Common Non-Voting Shares of the Capital Stock of
fully paid and non-assessable transferable
n by the holder hereof in person or by duly
der of this Certificate properly endorsed.

s caused this Certificate to be signed by its duly authorized officers
21 days of July A.D. 19 72

ROBERT L. VESCO PRESIDENT

1212a

1213a

For Value Received, hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

Shares represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said shares on the books of the within named Corporation with full power of substitution in the premises.

Dated 19

In presence of:

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFI

For 3,000 Shares

Issued to

Robert B. Verso as Custodian for Robert B. Verso under Uniform Gifts to Minors Act

Dated July 21 1972

From who

Dated

NO. ORIGINAL CERTIFICATE	N

GATE

m transferred

19

No. Original Shares	No. of Shares Transferred

Received Certificate No. _____
for _____ Shares
this ____ day of ____ 19__

1214a

(1215a - 1216a)

Exhibit P-21e

Copy of stub for Vesco & Co., Inc.'s certificate B 5

CERTIFICA

For 3,000 Shares

Issued to

Patricia J. Vance as Custodian for Daniel Vance under Uniform Gift to Minors Act

Dated July 21 19 77

From whom

Robert L. Vance as Custo... under Uniform Gi...

Dated

NO. ORIGINAL CERTIFICATE	NO. S...
81	

ATE [redacted]

transferred

[illegible] Rand Vargo
[illegible] Mines Ltd

July 7 1972

ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
3,000	3,000

Received Certificate No. _____
for _____ Shares
this ____ day of _____ 19__

Copy of stub for Vesco & Co., Inc.'s certificate B 6

(1217a - 1218a)

Exhibit P-21f

CERTIFIC

For 3,000 Shares

Issued to

Patricia J. Vesce as Custodian for Anthony D. Vesce under Uniform Gift to Minors Act

Dated July 21 1977

From whom

Robert L. Vesce a D. Vesce under U

Dated

NO. ORIGINAL CERTIFICATE	N
37	

CATE [redacted]

n transferred
Custodian for anthony
uniform Gift to Minors Act

July 21 1977

O. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
3,000	3,000

Received Certificate No. _____
for _____ Shares
this ____ day of ____ 19__

Exhibit P-21g

Copy of stub for Vesco & Co., Inc.'s certificate B 7

(1219a - 1220a)

CERTIFICA

For 3,000 Shares

Issued to

Patricia J. Veres as Custodian for Daven
Veres under Uniform Gifts to Minors Act

Dated July 21 19 72

From whom i
Robert L. Veres as C
Veres under Uniform

Dated

NO. ORIGINAL CERTIFICATE	NO. OF SHA
B 3	3

transferred
Custodian for Dawn b
Dept To Manag
July 21 19 72

ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
000	3,000

Received Certificate No. _____
for _____ Shares
this ____ day of _____ 19 ____

Exhibit P-21h

Copy of stub for Vesco & Co., Inc.'s certificate B 8

(1221a - 1222a)

CERTIFICATE

For 3,000 Shares

Issued to

Patricia J. Vasco as Custodian for Robert B. Vasco under Uniform Gift To Minors Act

Dated July 21 1972

From whom tra

Robert L. Vasco as Custodi
Vasco under Uniform Gift

Dated Jul

NO. ORIGINAL CERTIFICATE	NO. ORIGIN SHARES
B 4	3,00

nsferred
in for Robert S.
D. Mims and

ly 21 1977

AL	NO. OF SHARES TRANSFERRED
0	5,000

Received Certificate No. _____
for _____ Shares
this ___ day of _____ 19___

_____

_____

1222a

(1223a - 1226a)

Exhibit P-21i

Copy of Vesco & Co., Inc.'s certificate B 9
with stub.

No B 9

INCORPORATED

THE STA

VESCO &

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLA
NO PAR VA

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER U
OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE
TO BE ISSUED.

This Certifies that ROBERT L. VESCO as C
under the Uniform Gi
two thousand (2,000) ---------- Class "B"

Vesco & Co., Inc.

only on the books of the Corporation
authorized Attorney upon surrend

In Witness Whereof, the said Corporation ha
and its Corporate Seal to be hereunto affixed this

Shirley E Bailey

SHIRLEY E. BAILEY SECRETARY-TREASURER

21A

UNDER THE LAWS OF

SHARES

2,000

ATE OF DELAWARE

& CO., INC.

ASS "B" COMMON STOCK
ALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
% NON-CUMULATIVE

PON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT
RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED

Custodian for Daniel Vesco
ifts to Minors Act _____ is the owner of

' Common Non-Voting Shares of the Capital Stock of

fully paid and non-assessable transferable
by the holder hereof in person or by duly
der of this Certificate properly endorsed.

s caused this Certificate to be signed by its duly authorized officers
29th day of December A.D. 19 72

Patricia J. Vesco.

PATRICIA J. VESCO PRESIDENT

1224a

1225a

For Value Received _____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFI

For 2,000 Shares

Issued to

Robert L. Vance as Custodian for David Vance under Uniform Gift to Minors Act

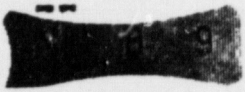
Dated December 29 1972

From whi

Dated

NO. ORIGINAL CERTIFICATE

1226a

GATE 

om transferred

19

No. Original Shares	No. of Shares Transferred

Received Certificate No. _____
for _____ Shares
this ____ day of _____ 19__

1226a

(1227a - 1250a)

Exhibit P-21j

Copy of Vesco & Co., Inc.'s certificate B 10 with stub.

(1227a - 1230a)

No. B 10

INCORPORATED UNI

THE STATE

VESCO &

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS
NO PAR VALU

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON
OF THE DESIGNATIONS, TE[illegible]MITATIONS AND RELATIVE RIG
TO BE ISSUED.

This Certifies that [illegible]T L. VESCO as Cu
un[illegible]the Uniform Gif
two thousand (2,000) ---------- Class "B" C

Vesco & Co., Inc.

only on the books of the Corporation
authorized Attorney upon surrender

In Witness Whereof, the said Corporation has
and its Corporate Seal to be hereunto affixed this 2

Shirley E. Bailey

SHIRLEY E. BAILEY SECRETARY-TREASURER

1228a

SHARES

-2,000-

DER THE LAWS OF

OF DELAWARE

CO., INC.

"B" COMMON STOCK
E, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

REQUEST AND WI[illegible] CHARGE, A FULL SUMMARY STATEMENT
UTS AND PREFERENC[illegible] OF THE SHARES OF EACH CLASS AUTHORIZED

stodian for Anthony D. Vesco
fts to Minors Act is the owner of
ommon Non-Voting Shares of the Capital Stock of
fully paid and non-assessable transferable
by the holder hereof in person or by duly
of this Certificate properly endorsed.

aused this Certificate to be signed by its duly authorized officers
9th day of December A.D. 19 72

Patricia J. Vesco.
PATRICIA J. VESCO PRESIDENT

For Value Received, hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

Shares represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated 19

In presence of

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE

No. [illegible]

For 2,000 Shares

Issued to

Robert L. Vance as Custodian for Anthony D Vance under the Uniform Gifts to Minors Act

Dated December 29 1972

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No.

for Shares

this day of 19

Exhibit P-21k

Copy of Vesco & Co., Inc.'s certificate B 11 with stub.

(1231a - 1234a)

No. B 11

INCORPORATED UNDER THE LAWS OF

SHARES 2,000

THE STATE OF DELAWARE

VESCO & CO., INC.

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B" COMMON STOCK
NO PAR VALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED TO BE ISSUED.

Cancelled

This Certifies that ROBERT L. VESCO as custodian for Daun L. Vesco under the Uniform Gifts to Minors Act is the owner of two thousand (2,000) ---------- Class "B" Common Non-Voting Shares of the Capital Stock of Vesco & Co., Inc. fully paid and non-assessable transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 29th day of December A.D. 1972

Shirley E Bailey
SHIRLEY E. BAILEY SECRETARY-TREASURER

Patricia J. Vesco
PATRICIA J. VESCO PRESIDENT

1232a

For Value Received, hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated 19

In presence of

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE

For 2,000 Shares

Issued to

Robert L. Vance as Custodian for Dawn L. Vance under Uniform Gifts to Minors Act

Dated December 29 1972

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No.

for Shares

this day of 19

Exhibit P-211

Copy of Vesco & Co., Inc.'s certificate B 12
with stub.

(1235a - 1238a)

No. B 12

INCORPORATED UNDER THE LAWS OF

SHARES 2,000

THE STATE OF DELAWARE

VESCO & CO., INC.

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B" COMMON STOCK
NO PAR VALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED TO BE ISSUED.

This Certifies that ROBERT L. VESCO as Custodian for Robert B. Vesco under the Uniform Gifts to Minors Act is the owner of two thousand (2,000)---------- Class "B" Common Non-Voting Shares of the Capital Stock of Vesco & Co., Inc. fully paid and non-assessable transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 29th day of December A.D. 1972

Shirley E. Bailey
SHIRLEY E. BAILEY SECRETARY-TREASURER

Patricia J. Vesco
PATRICIA J. VESCO PRESIDENT

1236a

1237a

For Value Received, ____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

SIGNATURE MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE No. B 12

For 2,000 Shares

Issued to

Robert L. Vance as Custodian for Brent B. Vance under Uniform Gifts to Minors Act

Dated December 29 1972

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No. ____

for ____ Shares

this ____ day of ____ 19 ____

Exhibit P-21m

Copy of stub for Vesco & Co., Inc.'s certificate B 13

(1239a - 1240a)

CERTIFICATE

[redacted]

For 2,000 Shares

Issued to

Edwin J. Vare as Custodian for Daniel Vare under Uniform Gifts to Minors Act

Dated December 29 1972

From whom transferred

Robert L. Vare as Custodian for Daniel Vare under Uniform Gifts to Minors Act

Dated December 29 1972

No. Original Certificate	No. Original Shares	No. of Shares Transferred
B-9	2,000	2,000

Received Certificate No. ___

for ___ Sha

this ___ day of ___ 19

Exhibit P-21n

Copy of stub of Vesco & Co., Inc.'s certificate B 14

(1241a - 1242a)

CERTIFICATE

[redacted]

For 2,000 Shares

Issued to

Patricia J. Vano as Custodian for Anthony D. Vano Under Uniform Gifts to Minors Act

Dated December 29 19 72

From whom transferred

Robert L. Vano as Custodian for Anthony D. Vano under Uniform Gifts to Minors Act

Dated December 29 19 72

No. Original Certificate	No. Original Shares	No. of Shares Transferred
B-10	2,000	2,000

Received Certificate No. ___

for ___ Sha

this ___ day of ___ 1

Exhibit P-21o

Copy of stub of Vesco & Co., Inc.'s certificate B 15

(1243a - 1244a)

P. 210

CERTIFICATE

For 2,000 Shares

Issued to

Patricia J. Vent as Custodian for Dawn L. Vent under Uniform Gifts to Minors Act

Dated December 29 1972

From whom transferred

Edward L. Vent as Custodian for Dawn L. Vent under Uniform Gifts to Minors Act

Dated December 29 1972

No. Original Certificate	No. Original Shares	No. of Shares Transferred
P-11	2,000	2,000

Received Certificate No. ____

for ____ Shares

this ____ day of ____ 19 ____

Exhibit P-21p

Copy of stub of Vesco & Co., Inc.'s certificate B 16

(1245a - 1246a)

p. 21

CERTIFICATE [redacted]

For 2,000 Shares

Issued to

Petrina J. Vance as Custodian for Robert B. Vance under Uniform Gift to Minors Act

Dated December 29 1972

From whom transferred

Edwin L. Vance as Custodian for Robert B. Vance under Uniform Gift to Minors Act

Dated December 29 1972

No. Original Certificate	No. Original Shares	No. of Shares Transferred
B-12	2,000	2,000

Received Certificate No. ____

for ____ Shar

this ____ day of ____ 19

Exhibit P-22a

Copy of Vesco & Co., Inc.'s certificate A 1
with stub.

(1247a - 1250a)

p. 22a

No. A 1

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

SHARES -52-

VESCO & CO., INC.

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B" COMMON STOCK
NO PAR VALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED TO BE ISSUED.

This Certifies that ROBERT L. VESCO is the owner of

fifty-two (52) Class "A" Common Voting Shares of the Capital Stock of

Vesco & Co., Inc.

fully paid and non-assessable transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 21 day of July A.D. 19 72

Shirley Bailey
SHIRLEY BAILEY SECRETARY-TREASURER

Robert L. Vesco
ROBERT L. VESCO PRESIDENT

© ...

L2462

1249a

For Value Received, hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto Vesco Co Inc

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

Shares represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated 19

In presence of

IMPORTANT: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE

[redacted]

For 52 Shares

Issued to

Robert L. Vess

Dated July 21 1972

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No.

for Sh

this day of

Exhibit P-22b

Copy of Vesco & Co., Inc.'s certificate A 2 with stub.

(1251a - 1254a)

No. A 2

INCORPORATED UNDER THE LAWS OF

THE STATE OF DELAWARE

SHARES -12-

VESCO & CO., INC.

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B" COMMON STOCK
NO PAR VALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED TO BE ISSUED.

This Certifies that ROBERT L. VESCO as Custodian for Daniel Vesco under the Uniform Gifts to Minors Act is the owner of twelve (12) Class "A" Common Voting Shares of the Capital Stock of Vesco & Co., Inc. fully paid and non-assessable transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 21 day of July A.D. 1972

Shirley Bailey
SHIRLEY BAILEY SECRETARY-TREASURER

ROBERT L. VESCO PRESIDENT

1252a

For Value Received, _____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares

represented by the within Certificate and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of:

_____

_____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE

For 12 Shares

Issued to

Robert L. Vesco as Custodian for Daniel Vesco under Uniform Gifts to Minors Act

Dated July 21 1972

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No.

for Shares

this day of 19

Exhibit P-22c

Copy of Vesco & Co., Inc.'s certificate A 3 with stub.

(1255a - 1258a)

No. A 3

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

SHARES -12-

VESCO & CO., INC.

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B" COMMON STOCK
NO PAR VALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED TO BE ISSUED.

This Certifies that ROBERT L. VESCO as Custodian for Anthony D. Vesco under the Uniform Gifts to Minors Act is the owner of twelve (12) ---------- Class "A" Common Voting Shares of the Capital Stock of Vesco & Co., Inc. fully paid and non-assessable transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Wherrof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 21 day of July A.D. 19 72

Shirley Bailey
SHIRLEY BAILEY SECRETARY-TREASURER

ROBERT L. VESCO PRESIDENT

For Value Received, _____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE No. A 3

For 12 Shares

Issued to

About 2 years as Cert. to Incorporation

Years under Uniform Fifty & Saving Act

Dated July 21 1922

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No.

for Sh

this day of

Exhibit P-22d

Copy of Vesco & Co., Inc.'s certificate A 4
with stub.

(1259a - 1262a)

No. A 4

INCORPORATED UNDER THE LAWS OF

THE STATE OF DELAWARE

SHARES 12

VESCO & CO., INC.

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B" COMMON STOCK
NO PAR VALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED TO BE ISSUED.

This Certifies that ROBERT L. VESCO as Custodian for Dawn L. Vesco under the Uniform Gifts to Minors Act is the owner of twelve (12)---------- Class "A" Common Voting Shares of the Capital Stock of Vesco & Co., Inc. fully paid and non-assessable transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 21 day of July A.D. 19 72

Shirley Bailey
SHIRLEY BAILEY SECRETARY-TREASURER

Robert L. Vesco
ROBERT L. VESCO PRESIDENT

For Value Received, _____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE No. [redacted]

For 17 Shares

Issued to

Robert L. Veneo as Custodian for Dawn L. Veneo under Uniform Gifts to Minors Act

Dated July 21 1972

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No. ____

for ____ Shares

this ____ day of ____ 19

Exhibit P-22e

Copy of Vesco & Co., Inc.'s certificate A 5
with stub.

(1263a - 1266a)

№ A 5

INCORPORATED UNDER THE LAWS OF

THE STATE OF DELAWARE

SHARES 12

VESCO & CO., INC.

1,000 SHARES CLASS "A" COMMON STOCK
NO PAR VALUE, VOTING

20,000 SHARES CLASS "B" COMMON STOCK
NO PAR VALUE, NON-VOTING

10,000 SHARES PREFERRED STOCK
PAR VALUE $1,000.00 PER SHARE
6% NON-CUMULATIVE

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE, A FULL SUMMARY STATEMENT OF THE DESIGNATIONS, TERMS, LIMITATIONS AND RELATIVE RIGHTS AND PREFERENCES OF THE SHARES OF EACH CLASS AUTHORIZED TO BE ISSUED.

This Certifies that ROBERT L. VESCO as Custodian for Robert B. Vesco under the Uniform Gifts to Minors Act is the owner of twelve (12) Class "A" Common Voting Shares of the Capital Stock of Vesco & Co., Inc. fully paid and non-assessable transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 21 day of July A.D. 1972

Shirley Bailey
SHIRLEY BAILEY SECRETARY-TREASURER

ROBERT L. VESCO PRESIDENT

For Value Received, _____ hereby sell, assign and transfer

PLEASE INSERT SOCIAL SECURITY OR OTHER TAXPAYER IDENTIFYING NUMBER OF ASSIGNEE

unto _____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

_____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

CERTIFICATE No. A 5

For 17 Shares

Issued to

Robert L. Vesce as Custodian for Robert B. Vesce under Uniform Gifts to Minors Act

Dated 19

From whom transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No. ____

for ____ Shares

this ____ day of ____ 19 ____

Exhibit P-22f

Copy of stub for Vesco & Co., Inc.'s certificate A 6

(1267a - 1268a)

CERTIFICATE No. A 6

For 12 Shares

Issued to

Patricia Vance as Custodian for Derrick Vance under Uniform Gift to Minors Act

Dated July 21 1972

From whom transferred

Robert L. Vance as Custodian for Derrick Vance under Uniform Gift to Minors Act

Dated July 21 1972

No. Original Certificate	No. Original Shares	No. of Shares Transferred
A 2	12	12

Received Certificate No. _____

for _____ Shares

this _____ day of _____ 19 _____

Exhibit P-22g

Copy of stub for Vesco & Co., Inc.'s certificate A 7

(1269a - 1270a)

CERTIFICATE

[redacted]

For 12 Shares

Issued to

Patricia J. Vesco as Custodian for Anthony S. Vesco under Uniform Gift to Minors Act

Dated July 21 1972

From whom transferred

Robert L. Vesco as Custodian for Anthony S. Vesco under Uniform Gift to Minors Act

Dated July 21 1972

No. Original Certificate	No. Original Shares	No. of Shares Transferred
A 3	12	12

Received Certificate No. ____

for ____ Shares

this ____ day of ____ 19 ____

Exhibit P-22h

Copy of stub for Vesco & Co., Inc.'s certificate A 8

(1271a - 1272a)

CERTIFICATE

No. [redacted] B

For 1 V Shares

Issued to

Patricia J. Vance as Custodian for Dawn L. Vance under Uniform Gift to Minors Act

Dated July 21 1972

From whom transferred

Robert L. Vance as Custodian for Dawn L. Vance under Uniform Gift to Minors Act

Dated July 21 1972

No. Original Certificate	No. Original Shares	No. of Shares Transferred
A 4	1 V	1 V

Received Certificate No. _____

for _____ Sh

this ____ day of _____

Exhibit P-22i

Copy of stub for Vesco & Co., Inc.'s certificate A 9

(1273a - 1274a)

CERTIFICATE No. A-9

For 12 Shares

Issued to

Patricia J. Verso as Custodian for Robert B. Verso under Uniform Gifts to Minors Act

Dated July 21 1972

From whom transferred

Patricia J. Verso as Custodian for Robert B. Verso under Uniform Gifts to Minors Act

Dated July 21 1972

No. Original Certificate	No. Original Shares	No. of Shares Transferred
A 5	12	12

Received Certificate No. ____ for ____ Shares this ____ day of ____

Exhibit A

Letter dated May 16, 1968 from Hannoch, Weisman, Stern & Besser to Robert Jeffers, Esq.

(1275a - 1282a)

D A

1276a

HANNOCH, WEISMAN, STERN & BESSER
COUNSELLORS AT LAW
744 BROAD STREET
NEWARK, NEW JERSEY 07102

HERBERT J. HANNOCH
JOSEPH A. WEISMAN
WILLIAM S. MYERS 1926-1965
MILTON H. STERN
ALBERT G. BESSER
IRVIN I. ZIMMERMAN
BERNARD S. BERKOWITZ
JOSEPH S. SIEGEL

RICHARD J. CREEGAN
BENJAMIN C. WALLBORG
RALPH M. LOWENBACH
RONALD M. SHURTZ
CARL G. WEISENFELD
FRANK L. STIFELMAN
JAMES J. SHRAGER
STEPHEN R. GREENWALD
JOEL D. SIEGEL
CHARLES F. MANDELL
ASHLEY STEINHART
L. ROBERT LIEB

621-6000
(AREA CODE 201)
N. Y. TELEPHONE
267-[illegible]
(AREA CODE 212)

May 16, 1968

REFER TO FILE NO.
W 542

Robert Jeffers, Esq.
Hogan & Hartson, Esqs.
815 Connecticut Avenue, N.W.
Washington, D. C. 20006

Re: Robert L. Vesco

Dear Mr. Jeffers:

In accordance with your request, I shall attempt to summarize the background and tentative proposals regarding the estate plan of Robert L. Vesco ("RLV"). In essence, this will serve as a work paper for the contemplated get together among the persons concerned.

1. I am handing you herewith one copy each of the Wills of RLV and Patricia J. Vesco, which were executed on December 24, 1967.

2. The following is a summary of the individual and joint holdings of RLV (excluding his ICC stock):

	Jointly Owned With Wife	RLV Individually
Cash	$ 250,000.	
Houses and furnishings	250,000.	
Trust Company National Bank stock	200,000.	
Cash to be received from redemption of ICC bonds	200,000.	
Misc. investments, cars, etc.		$ 50,000.
Orvis Bros. partnership interests (approximate)		850,000.
	$ 900,000.	$ 900,000.

I did not realize, prior to the receipt of this schedule, how much of RLV's holdings were in joint ownership with his wife. Obviously, the gift and estate tax implications of this form of ownership must be examined, since it is my understanding that the consideration for all jointly held property emanated exclusively from RLV.

3. RLV, individually, owns 909,000 shares of ICC stock. Each of his four children holds 11,595 shares of ICC stock.

4. There is a life insurance policy in the amount of $48,000 on the life of RLV, of which his wife is the beneficiary. In addition, there is $700,000 of travel accident insurance covering RLV, respecting which Patricia J. Vesco is also the beneficiary.

5. It is now contemplated that four irrevocable intervivos trusts will be established, each for the primary benefit of one child of RLV and the descendants of that child. Initially, the trustees will be Patricia J. Vesco and Trust Company National Bank.

The four trusts will be identical in all substantial respects, and will provide essentially, as follows:

(a) The trust will last until the date of death of the survivor of RLV and the child who is the primary beneficiary of the trust.

(b) The income of the trust will be payable to the child, at convenient intervals, but not less often than annually.

(c) If the child predeceases RLV, the income of the trust will be payable to RLV's other issue, per stirpes; and in the absence of such issue the same will be paid to the Robert L. Vesco Foundation.

(d) If the child survives RLV, he or she, from and after the attainment of the age of 21, will have the annual right to demand the distribution of not more than 5% of the

principal - - with the power being granted to satisfy such right of demand in kind. This right of demand will be non-cumulative, so that if a child fails to exercise the right in year 1, he cannot demand 10% in year 2.

(e) If the child survives RLV, he or she, from and after age 21, will have the right to appoint all or part of the income and/or principal of the trust fund outright to, or in trust for the benefit of, such child's issue, equally or unequally.

(f) If the trust terminates upon the death of RLV (he being the survivor), then the principal of the trust will pass to the issue of the child-primary beneficiary; and in default of such issue, to the other surviving issue of RLV, per stirpes, with the provision that any share of such principal payable to another child of RLV will be added to that child's trust fund. If there is a complete failure of issue, the principal will pass to the Robert L. Vesco Foundation.

(g) If the trust terminates by reason of the death of the child (he or she being the survivor), and if the child is an adult at the time of his or her death, then the principal of the trust fund will pass to such person or persons, other than the child, his estate, his creditors or the creditors of his estate, in such portions and amounts, and either outright or in trust, as the child shall designate in his or her Will; and to the extent that the child shall not duly appoint all or any part of the principal of the trust, then the same shall be distributed in the same manner as described above in subparagraph (f).

(h) Until such time as a child is serving as a co-trustee of his or her trust (see subparagraph (i) below), Patricia J. Vesco will have the right to remove the Trust Company National Bank as trustee, and to select a substitute co-trustee or co-trustees (none of whom can be RLV).

(i) Each child, upon the attainment of the age of 21, will have the right to act as a co-trustee of his or her trust; and will have the further right to remove the other then acting trustees, or any of them, and to serve as the sole trustee of such trust.

(j) After a child becomes the sole trustee of his or her trust, he or she shall have the right to designate a successor trustee or trustees to serve if the child ceases to act as trustee for any reason whatsoever.

(k) If RLV and Patricia J. Vesco are divorced, or are separated pursuant to a decree of separation or a written separation agreement, Patricia J. Vesco will be required to resign as trustee of all trusts, and the right of removal granted to her, described in subparagraph (h) above, will terminate.

(l) During his lifetime, RLV will retain the right to designate the persons who may serve as trustees of all the trusts from and after the time that neither Patricia J. Vesco or Trust Company National Bank is acting as a trustee, including the right to change the order of succession to the office of trustee and to provide for the removal of any such acting successor trustee. Here again RLV cannot exercise this power so as to enable himself to act as a trustee or co-trustee of any trust.

(m) If at any time, for any reason whatsoever, there is a complete vacancy in the office of trustee, RLV, if living, will have the right to designate a trustee or trustees to act, none of whom can be himself. If RLV is not then living, United States Trust Company will serve as trustee.

6. Patricia J. Vesco will execute an instrument, at the commencement of her duties as trustee of the trust described in item 5 above, pursuant to which she will waive all commissions, both on income and on principal. At the same time, the Trust Company National Bank will enter into an agreement to serve for an agreed upon compensation which will be based upon the extent of the services which this institution will be required to perform, as trustee, rather than on the magnitude of the value of the principal.

7. RLV will transfer $3,000 in cash to each of the four trusts.

8. RLV, together with the trustees of the four trusts, will enter into a plan of incorporation of a Holding Company, pursuant to which:

(a) RLV will transfer 500,000 shares of ICC stock to Holding Company in exchange for that number of shares of the preferred stock of Holding Company as will be equal to the aggregate value of the 500,000 shares of ICC stock, computed by using the mean between the highest and lowest selling price on the date of transfer, divided by the par value of such preferred stock, e.g., $1,000. This preferred stock will be entitled to receive a dividend of 6% of the par value before any dividends can be paid on the common stock of Holding Company. In case of liquidation of the Holding Company, the holders of the preferred stock will be entitled to receive the par value thereof, plus all declared but unpaid dividends thereon, before any distribution is made to the holders of common stock. Holding Company will have the right to redeem all or any part of the outstanding preferred stock at a price of $1,000 per share, plus all declared but unpaid dividends thereon.

(b) RLV will transfer $60 in cash in exchange for 60 shares of no par value voting common stock of Holding Company, and each of the trusts will transfer $3,000 to Holding Company in exchange for 3,000 shares of the non-voting common stock of Holding Company, without par value. Thus, following such transfers, RLV will hold 60 shares of voting common, and the four trusts together will hold 12,000 shares of the non-voting common stock of Holding Company.

The two classes of common stock will be identical in all respects, share and share alike, except that the exclusive right to vote will be vested in the voting common.

9. There are a number of reasons that RLV has stated with respect to the proposed retention by him, individually, of some 400,000 shares of ICC stock. He may want to sell shares under the so-called 1% rule, from time to time. There is the possibility that he will transfer shares to the Robert L. Vesco Foundation. At his death, he would like to have his wife's share of his testamentary property comprised of shares of ICC stock.

10. RLV is now contemplating the following major changes in his testamentary plan, after the consummation of the Holding Company incorporation:

(a) He would bequeath 20 shares of his voting common stock of Holding Company to his wife, Patricia J. Vesco, if she survives him. If she does not survive him, those shares would pass, in equal parts, to the trusts for his descendants which hold the non-voting common stock of the Holding Company.

The remaining 40 shares of voting common stock would be bequeathed, in equal parts, to the same four trusts.

(b) The marital share would first be funded with assets other than the preferred stock of Holding Company.

(c) The entire residuary portion of RLV's property would pass to the Robert L. Vesco Foundation, with the appropriate provisions, of course, of a gift over to another qualified charitable and/or educational organization or organizations, in the event that for any reason the Robert L. Vesco Foundation did not qualify as an organization, dispositions to which qualify as charitable contributions for Federal estate tax purposes.

11. There will be created for each child a section 2503(c) trust which will own, and be the beneficiary of, a policy of insurance on the life of RLV in the face amount of $500,000. What is contemplated is a one year renewable term, or perhaps a five year term policy.

12. Patricia J. Vesco will contribute the required premiums to the section 2503(c) trusts which hold the insurance on RLV's life. The payments should not come from RLV himself, because of the Internal Revenue Service's position regarding the estate tax treatment of insurance on the life of a decedent which is purchased with premiums paid by the decedent during the three year contemplation of death period.

In order to provide Patricia J. Vesco with independent property from which such premiums can be paid, there should be a severance of certain of the jointly held property, and the creation of a substantial amount of separately owned property in the name of Patricia J. Vesco. While such conversion of ownership will constitute a gift from RLV to his wife, taking into account the gift tax marital deduction, and the available exclusion and lifetime exemption, RLV could transfer to Patricia a sizeable amount of cash, for example, without incurring any gift tax liability.

I have set forth herein the information which I believe that you want. I urge you, however, to feel free to contact me if you desire any amplification or explanation regarding the matters which are dealt with herein.

Best regards.

Sincerely yours,

MILTON H. STERN

MHS:DG
Enc.
cc: Mr. Robert L. Vesco
cc: Alan Bloom, C.P.A.

Exhibit B

Letter dated February 29, 1972 from Lybrand, Ross Bros. & Montgomery to Commissioner of Internal Revenue.

(1283a - 1288a)

D B3 (Vesco, R.L.

1284a

LYBRAND, ROSS BROS. & MONTGOMERY

RECEIVED
JUN 16 1972
L. M. POLISAR

COOPERS & LYBRAND
IN PRINCIPAL AREAS
OF THE WORLD

1100 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
202/223-1700

RESIDENT PARTNERS
WILLIAM T. BARNES
JOSEPH M. CONDER
A. CARL GASPERROW
FRANCIS J. GREY
PETER M. NUNN
IRA H. SHAPIRO
JOHN F. SILTON

MAR 8 1972

February 29, 1972

Commissioner of Internal Revenue
Washington, D.C. 20224

Attention: T:I:R

Re: Robert L. Vesco, Daniel William Vesco, Dawn Lee Vesco, Robert Bruce Vesco and Anthony Donald Vesco

Dear Sir:

A ruling is respectfully requested that a proposed transfer of property by five individuals to a newly-formed corporation will constitute an exchange in which no gain or loss is recognized to the transferors pursuant to section 351 of the Internal Revenue Code.

FACTS

Mr. Robert L. Vesco of Boonton Township, New Jersey, Social Security #336-32-9035, (hereinafter referred to as "Mr. Vesco") is chairman of the board of directors of International Controls Corp. (hereinafter referred to as "ICC"), a publicly held corporation listed on the American Stock Exchange.

Daniel William Vesco, Dawn Lee Vesco, Robert Bruce Vesco and Anthony Donald Vesco (hereinafter collectively referred to as "the children") are all minor children of Mr. Vesco and reside at the same address.

The Federal income tax returns of Mr. Vesco are filed with the Internal Revenue Service Center in Philadelphia subject to audit by the Newark district office.

Mr. Vesco owns 928,960 shares of voting common stock of ICC which represents approximately 26 per cent of the total shares of common stock of ICC outstanding. Each of the children owns 11,595 shares of voting common stock of ICC. These shares have been owned by the children since 1967 and are held on their behalf in custodian accounts. No other shares of ICC are directly or constructively owned by Mr. Vesco or the children.

PROPOSED TRANSACTION

It is believed that corporate ownership of a substantial portion of the ICC shares held by Mr. Vesco and those of his children will be a more desirable business and administrative arrangement than the present direct ownership provides. In addition, the receipt by Mr. Vesco of shares of both preferred and common stock of the transferee corporation in exchange for a substantial portion of his holdings of common stock of ICC will facilitate a more orderly disposition of his estate at the time of his death, as well as the funding of death costs, *without necessarily affecting control of the present holdings of ICC stock.*

Accordingly, a new corporation (hereinafter referred to as "Company") will be organized under the laws of Deleware with capital stock consisting of a class of 6 per cent non-cumulative preferred stock with a par value of $1,000 per share; a class of no par value nonvoting common stock, and a class of no par value voting common stock.

The two classes of common stock of Company will be identical in all respects except that the right to vote will be vested exclusively in the voting common shares. The preferred stock will be entitled to receive a 6 per cent dividend on a non-cumulative basis before any dividend can be paid on the common stock. The preferred stock will be redeemable at, and in the event of liquidation, preferred over the outstanding common stock to the extent of par value plus any declared but unpaid dividends.

Pursuant to the proposed plan, Mr. Vesco will transfer to Company 800,200 shares of his ICC common stock solely in exchange for 6,400 shares of preferred stock and 52 shares of

voting common stock of Company. At the same time, each of the children will transfer to Company 11,595 shares (46,380 in the aggregate) of ICC common stock solely in exchange of 3,00 shares each (12,000 shares in the aggregate) of nonvoting common stock and 12 shares each (43 shares in the aggregate) of the voting common stock of Company.

The 6,400 shares of preferred stock, 12,000 shares of nonvoting common stock and 100 shares of voting common stock of Company to be issued to Mr. Vesco and the children (sometimes collectively referred to as "the transferors") pursuant to the proposed plan will constitute the total outstanding stock of Company. The issuance of additional shares of Company stock is not presently contemplated, nor are any dispositions of the shares of Company stock received by the transferors presently planned. There is no present intention to cause Company to redeem the preferred stock or to liquidate.

The stock of Company to be received by the transferors will be issued solely in exchange for the ICC stock to be received by Company and *no shares will be issued for services.*

The ICC shares to be transferred to Company will not be subject to liabilities nor will any liabilities of the transferors be assumed by Company in pursuance of the proposed plan.

There is no present intention for Company to sell or otherwise dispose of any of the ICC shares to be received in the exchange, nor to acquire any other property.

Each party to the proposed plan will pay his respective share of the expenses arising from the transaction.

RULING REQUESTED

It is respectfully requested that the following ruling paragraphs be issued:

1. No gain or loss will be recognized to Mr. Vesco or to the children upon the proposed transfer of ICC stock to Company solely in exchange for all of its outstanding shares of preferred, nonvoting common and voting common stock, as described above, pursuant to the provisions of section 351(a) of the Internal Revenue Code.

2. No gain or loss will be recognized to Company upon the issuance of shares of its stock in exchange for stock of ICC under section 1032 of the Code.

3. The basis of the ICC stock transferred to Company by Mr. Vesco and the children will be allocated to the Company shares received by each in exchange therefor in preparation to their relative fair market values as provided by section 358 of the Code and section 1.358-2(a)(2) of the Regulations thereunder. Under section 1223(1), the holding period of the stock of Company received will include the period during which the ICC stock given in exchange was held.

4. Pursuant to section 362(a) and section 1223(2) of the Code, the basis and holding period of the shares of ICC stock received by Company will be the same as the basis and holding period, respectively, of such shares in the hands of each transferor immediately before the exchange.

5. The preferred stock of Company received by Mr. Vesco will not constitute "section 306 stock" within the meaning of section 306(c) of the Code.

GROUNDS FOR RULING

No gain or loss is recognized upon the transfer of property to a corporation solely in exchange for stock of the transferee under section 351(a) of the Code, provided the transferors in the aggregate are "in control" of the transferee immediately after the exchange. In general, control is represented by ownership of at least 80 per cent of the voting stock and 80 per cent of each of the other classes of stock of the transferee corporation. Section 368(c).

Inasmuch as Mr. Vesco and the children will transfer property (stock of ICC) to Company solely in exchange for stock of Company, and as a result will own all shares of each class of stock of Company outstanding after the exchange with no present intent to dispose of any such shares, the requirements of section 351(a) will be satisfied.

Section 1.351-1(c) of the Regulations imposes certain additional requirements which could cause section 351 to be inapplicable where the property transferred is stock of another

corporation. However, among other circumstances necessary for disqualification, the transfer must result directly or indirectly in diversification of the transferors' interests. Section 1.351-1(c)(1)(i) of the Regulations. Inasmuch as the transferors will transfer identical assets to Company, i.e., voting common stock of ICC, these provisions of the regulations have no adverse effect upon qualification of the proposed plan under section 351 of the Code. See section 1.351-1(c)(5) and (6), Example (1) of the Regulations.

The preferred stock of Company to be received by Mr. Vesco will not constitute "section 306 stock" inasmuch as such stock will not be (i) distributed to Mr. Vesco in a transaction which is nontaxable by reason of section 305 (section 306(c)(1)(A), (ii) received in pursuance of a plan of reorganization within the meaning of section 306 (a) or a distribution to which section 355 applies (section 306(c)(1)(B)), or (iii) received in exchange for the surrender of "section 306 stock" (section 306(c)(1)(C); nor will Company have any earnings and profits at the date the transaction is consummated which would be a dividend if money would be distributed in lieu of the preferred stock (section 306(c)(2)).

* * *

To the best of the knowledge of the undersigned, identical issues presented for ruling herein are not being considered by any field office of the Service in connection with an active examination of audit of a tax return already filed nor are being considered by a branch office of the Appellate Division.

A power of attorney authorizing the undersigned to represent Mr. Vesco is enclosed, as is a power of substitution from the undersigned to Mr. Paul Schecter.

In the event it is contemplated that the ruling paragraphs cannot be issued as requested, the opportunity for a conference will be appreciated. Please call me or Mr. Schecter at 223-1700 if you desire any additional information.

Very truly yours,

IRA H. SHAPIRO

IHS:mcp
Encs.

Exhibit C

Letter dated July 6, 1972 from Lybrand, Ross Bros. & Montgomery to Commissioner of Internal Revenue.

(1289a - 1291a)

July 6, 1972

Commissioner of Internal Revenue
Washington, D.C. 20224

Attention: T:I:R:4

Re: International Controls Corp.

Dear Sir:

In response to an application for ruling dated February 29, 1972, a ruling letter was issued by your office on April 26, 1972 with respect to certain Federal income tax consequences of a proposed transfer of shares of International Controls Corp. ("ICC") owned by Mr. Robert L. Vesco and his children to a new corporation ("Company"). A supplemental ruling is hereby requested to take into account a reduction in the number of ICC shares to be transferred to Company as described below.

Pursuant to the plan as originally proposed, Mr. Vesco would transfer 800,000 of his 928,960 shares of common stock of ICC to Company in exchange for 6,400 shares of preferred and 52 shares of voting common stock of Company. In addition, 48,380 shares of ICC stock owned by his children were to be transferred to Company in exchange of 12,000 shares of nonvoting common and 48 shares of voting common stock of Company.

Due to a change of circumstances Mr. Vesco presently contemplated the possibilities of disposal of a lesser portion of his holdings of ICC stock to interested parties. Accordingly, it is proposed that the ICC stock to be transferred by Mr. Vesco to Company will be reduced to approximately 300,000 to 350,000 shares. In exchange therefor, Mr. Vesco will receive the 52 shares etc.

of voting common stock of Company as originally proposed but the number of shares of preferred stock of Company to be issued to Mr. Vesco will be reduced to reflect the lesser value of ICC stock to be transferred by Mr. Vesco.

The ICC stock owned by the children to be transferred to Company will be reduced to approximately 18,000 to 20,000 shares in total (4,500 to 5,000 shares each) in order that the children's shares to be transferred will be in the same proportion to the total shares transferred under the revised plan as under the original plan. The nonvoting and voting common shares of Company to be issued in exchange for the children's ICC stock will remain unchanged.

Apart from the number of ICC shares to be transferred to Company and the number of preferred shares to be issued by Company in the exchange, all of the other facts and representations set forth in the third paragraph on page 2 through the fifth paragraph beginning on page 3 of the application for ruling will remain applicable to the transaction as revised.

A supplemental ruling is respectfully requested that each of the holdings of your ruling letter of April 26, 1972 will remain in full force and effect with respect to the proposed transaction as revised to take account of the reduction in the number of ICC shares to be transferred to Company.

If any additional information is desired please call the undersigned or Paul A. Schecter at 223-1700.

Very truly yours,

/s/
IRA H. SHAPIRO

IHS:mcp

Copy to: Leonard Polisar, Esq.
Art Rothkopf, Esq.
Milton H. Stern, Esq.
Alan Bloom

Exhibit D

Letter dated April 26, 1972 from Internal Revenue Service to Ira Shapiro.

(1292a - 1295a)

Defendant Exhibit D U.S. Dist. Court, S.C. of N.Y.
June 30, 1975

T:I:R:4 April 26, 1972

Mr. Ira Shapiro
1100 Connecticut Avenue, N.W.,
Washington, D.C. 20036

In re: International Controls Corp.

Dear Mr. Shapiro:

This is in reply to a letter dated February 29, 1972, in which a ruling is requested as to the Federal income tax consequences of a proposed transaction. The relevant facts submitted are summarized below.

Mr. L. Vesco ("Mr. Vesco") is chairman of the board of directors of International Controls Corp. ("ICC"), a publicly held corporation listed on the American Stock Exchange. Mr. Vesco owns 928,000 shares of ICC common stock which represents approximately 26 percent of the total shares of ICC stock outstanding. Daniel William Vesco, Dawn Lee Vesco, Robert Bruce Vesco and Anthony Donald Vesco are the children ("the children") of Mr. Vesco and each of them owns 11,595 shares of ICC common stock which are held on their behalf in custodian accounts.

It is proposed that a new corporation ("Company") be formed under the laws of Delaware with a capital stock consisting of a class of $1,000 par value six percent noncumulative preferred stock, a class of no par value common stock, and a class of no par value voting common stock. The two classes of common stock will be identical in all respects except that the voting common stock will have the exclusive right to vote. The preferred stock will be redeemable at any time at its par value plus declared but unpaid dividends, and will be preferred in the same amount in the event of liquidation.

Pursuant to a proposed plan, Mr. Vesco will transfer to Company 800,000 shares of ICC stock solely in exchange for 6,400 shares of preferred stock of Company and 52 shares of voting common stock of Company. Each of the children will transfer 11,595 shares of ICC common stock to Company and each will receive in exchange 3,000 shares of Company nonvoting common stock and 12 shares of voting common stock of Company. The 6,400 shares of preferred stock, 12,000 shares of nonvoting common stock and 100 shares of voting common stock of Company to be issued to Mr. Vesco and the children ("the transferors") will constitute the total outstanding stock of

The issuance of additional shares of Company stock is not presently contemplated, nor are any dispositions of the shares of Company stock received by the transferors presently planned. There is no present intention on the part of Company to redeem the preferred stock. The ICC shares to be transferred to Company will not be subject to any liabilities nor will any liabilities of the transferors be assumed by Company pursuant to the proposed transaction.

There is no present intention for the Company to sell or otherwise dispose of any of the ICC shares to be received in the exchange, nor to acquire any other property.

The transferors will each pay their own expenses and Company will pay its own expenses of the proposed transaction.

It is believed that corporate ownership of a substantial portion of the ICC shares held by the transferors will be a more desirable business and administrative arrangement than the present direct ownership provides. In addition, the receipt by Mr. Vesco of shares of both preferred and common stock of Company wil[illegible]acilitate a more orderly disposition of his estate at the time of his death, as well as the funding of death costs, without necessarily affecting control of the present holdings of ICC stock.

Based solely on the information submitted, it is held as follows:

(1) No gain or loss will be recognized to the transferors upon the transfer of their shares of the stock of ICC to Company solely in exchange for preferred stock, nonvoting common stock and voting stock of Company (section 351(a) of the Internal Revenue Code of 1954).

(2) The basis of the shares of preferred stock, nonvoting common stock and voting common stock of Company received by the transferors will be the same as the basis of the ICC stock surrendered in exchange transfer (section 358(c)(1)), allowed among the shares of preferred stock. nonvoting common stock and voting common stock in proportion to their respective fair market value on the date of the exchange in accordance with section 1.358-2 of the Income Tax Regulations.

(3) No gain or loss will be recognised to Company upon the receipt of the stock of ICC in exchange for its stock (section 1032(a)).

(4) The basis of the ICC stock in the hands of Company will be the same as the basis of such stock in the hands of the transferors immediately prior to the exchange (section 362(a)).

(5) The holding period of the stock of ICC received by Company will include the period during which such stock was held by the transferors (section 1223(2)).

(6) The preferred stock of Company received by Mr. Vesco will not constitute "section 306 stock" within the meaning of section 306(c) of the Code.

No opinion is expressed as to the tax treatment of the transactions under the provisions of any of the other sections of the Code and Regulations which may also be applicable thereto, or to the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions which are not specifically covered by the above rulings.

A copy of this letter should be attached to the Federal income tax returns of the taxpayer involved for the taxable year in which the transaction covered by the above rulings is consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Mr. Alan K. Bloom.

Sincerely yours,

/s/ John F. Bogaard
JOHN F. BOGAARD
Chief, Reorganization Branch

Exhibit E

Letter dated July 21, 1972 from Internal Revenue Service to Ira Shapiro.

(1296a - 1298a)

DEFENDANT'S

1297a

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
JUN 30 1975
E-4

Department of the Treasury

Internal Revenue Service
Washington, D.C. 20224

Date: 21 JUL 1972

In reply refer to: T:I:R:4

Mr. Ira Shapiro
c/o Lybrand, Ross Bros. & Montgomery
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

In re: International Controls Corporation

Dear Mr. Shapiro:

This is in reply to a letter dated July 6, 1972, requesting a modification of our ruling letter dated April 26, 1972, hereby incorporated by reference.

Pursuant to your request, the following should be inserted in lieu of the last paragraph of the first page of our prior letter:

> "Pursuant to a proposed plan, Mr. Vesco will transfer to Company 300,000 to 350,000 shares of ICC stock in exchange for less than 6,400 shares of preferred stock of Company and 52 shares of voting common stock of Company. Each of the children will transfer 4,500 to 5,000 shares of ICC common stock to Company and each will receive in exchange 3,000 shares of Company nonvoting common stock and 12 shares of voting common stock of Company. The preferred stock, nonvoting common stock and voting common stock of Company to be issued to Mr. Vesco and the children ("the transferrors"), as described above, will constitute the total outstanding stock of Company. It is represented that the fair market value of the stock to be transferred by each transferror will equal the fair market value of the stock to be received in exchange therefor."

The above modification to our ruling letter dated April 26, 1972 will have no effect on the rulings set forth in that letter, and such rulings will remain in full force and effect.

In addition to the above, the following should be inserted after the ruling paragraph on the third page of our prior letter:

Mr. Ira Shapiro

In re: International Controls Corporation

"The rulings above are effective to the extent that the fair market value of the Company shares received represents the fair market value of the property surrendered in exchange therefor. No opinion is expressed as to the tax treatment of the amount, if any, by which the fair market value of the shares receive exceeds or is less than the fair market value of the property exchanged therefor. A determination of the fair market value of the property and the stock is specifically reserved until the Federal income tax returns of the taxpayers involved have been filed for the taxable year in which the transaction is consummated."

A copy of this letter as well as a copy of our prior letter should be attached to the Federal income tax returns of the parties involved for the taxable year in which the transaction is consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter has been sent to Mr. Alan K. Bloom.

Sincerely yours,

John F. Baggard

Chief, Reorganization Branch